
United States
Circuit Court of Appeals
For the Ninth Circuit.

ESTATE OF ISADORE ZELLERBACH, De-
ceased, J. David Zellerbach and Harold L.
Zellerbach, Executors,
Petitioners,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Transcript of Record

Upon Petitions to Review a Decision of the Tax Court
of the United States

FILED

FEB 5 - 1948

PAUL P. O'BRIEN, CLERK

No. 11795

United States
Circuit Court of Appeals
For the Ninth Circuit.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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APPEARANCES

For Taxpayer:

PHILIP S. EHRLICH,
ALBERT A. AXELROD.

For Commissioner:

E. A. TONJES.

Docket Number 9786

ESTATE OF ISADORE ZELLERBACH, deceased,
J. DAVID ZELLERBACH and HAROLD L. ZELLERBACH, Executors,
Petitioners,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

DOCKET ENTRIES

1945

Dec. 12—Petition received and filed. Taxpayer notified. Fee paid.

Dec. 13—Copy of petition served on General Counsel.

1946

Jan. 11—Answer filed by General Counsel.

Jan. 11—Request for hearing in San Francisco, California, filed by General Counsel.

Jan. 15—Copy of answer served on taxpayer, San Francisco, California.

Oct. 4—Hearings set Dec. 2, 1946, San Francisco, California.

Dec. 6—Hearing had before Judge Van Fossan on merits. Petitioner's motion to amend petition granted; respondent's motion to amend answer granted. Stipulation as to facts, amendment to petition, amended answer filed at hearing and served. Petitioner's brief 1/21/47; respondent's brief due 3/10/47; petitioner's reply due 4/10/47.

1946

Dec. 30—Answer to amendment to petition filed by General Counsel. 1/8/47 copy served.

1947

Jan. 6—Transcript of hearing 12/6/46 filed.

Jan. 15—Brief filed by taxpayer. 1/16/47 copy served.

Mar. 6—Motion for extension to March 28, 1947, to file reply brief filed by General Counsel. 3/7/47 granted.

Mar. 28—Reply brief filed by General Counsel.

Apr. 24—Reply brief filed by taxpayer. Copy served.

July 22—Findings of fact and opinion rendered, Judge Van Fossan. Decision will be entered under Rule 50. Copies served.

Aug. 22—Respondent's computation for entry of decision filed.

Aug. 25—Hearing set Sept. 17, 1947, Washington, D. C., on Rule 50.

Sept. 10—Consent to settlement filed by taxpayer.

Sept. 16—Decision entered, Judge Van Fossan, Div. 9.

Oct. 14—Petition for review by U. S. Circuit Court of Appeals for the Ninth Circuit with assignments of error filed by taxpayer.

Oct. 17—Proof of service filed.

Oct. 31—Notice and affidavit of service of filing petition for review filed.

Oct. 31—Praecipe for record filed by taxpayer with affidavit of service by mail thereon. [1*]

[Title of Tax Court and Cause.]

PETITION

The above named petitioner hereby petitions for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency (Office of Internal Revenue Agent in Charge, San Francisco Division, IRA:90-D:LB) dated September 20, 1945, and as a basis of its proceeding alleges as follows:

1. The petitioner is Estate of Isadore Zellerbach, Deceased, which petition is brought by J. David Zellerbach and Harold L. Zellerbach, the executors thereof, by virtue of said executors' appointment by the Superior Court of the State of California in and for the City and County of San Francisco, with its principal office at No. 343 Sansome Street, San Francisco, California. The return for the periods here involved were filed with the [2] Collector for the First District of California.

2. The notice of deficiency (a copy of which is attached and marked Exhibit A) was mailed to the petitioner on September 20, 1945.

3. The taxes in controversy are income taxes for the calendar years 1942 and 1943 and the amount in controversy is \$138,529.70. The deficiency asserted is \$66,944.62 and the petitioner claims that it is entitled to a refund of \$71,585.08, which amount was paid by the petitioner within three years before the filing of this petition.

4. The determination of tax set forth in the said notice of deficiency is based upon the following errors:

(a) The refusal of the respondent to allow for the calendar year 1942 a claimed deduction in the amount of \$316,957.84 for income received by the petitioner and claimed by the petitioner to be distributable to the heirs of the decedent (beneficiaries of the estate) and includable by them in their respective income tax returns; the respondent having allowed as a deduction the amount of \$181,000 actually distributed by the petitioner, and refused to allow a further claimed deduction in the amount of \$135,957.84.

(b) The refusal of the respondent to allow for the calendar year 1943 a claimed deduction in the amount of \$188,297.50 for income received by the petitioner and claimed by the petitioner to be distributable to the heirs of the decedent (beneficiaries of the estate) and includable by them in their respective income tax returns; the respondent having allowed as a deduction the amount of \$96,000.00 actually distributed by the petitioner and refused to allow a further claimed deduction in the amount of \$92,297.50.

5. The facts upon which petitioner relies as a basis for this proceeding are as follows:

(a) Isadore Zellerbach died testate on August 7, 1941, in the County of San Mateo, State of California, being at the time of his death a resident of the City and County of San Francisco, State of California; on the 2nd day of September, 1941, his

will was admitted to probate by the Superior Court of the State of California in and for the City and County of San Francisco in those certain probate proceedings entitled "In the Matter of the Estate of Isadore Zellerbach, Deceased, No. 87721," and J. David Zellerbach, Harold L. Zellerbach and Marcus M. Baruh, who were named therein as such, were appointed executors, and letters testamentary were issued to them. Marcus M. Baruh died on the 6th day of April, 1942, and ever since said date J. David Zellerbach and Harold L. Zellerbach have been and now are the duly appointed, qualified and acting [4] executors of the last will and testament of Isadore Zellerbach, Deceased.

(b) The estate filed income tax returns for the calendar years 1941, 1942 and 1943 with the Collector of Internal Revenue at San Francisco. For the taxable year 1942 the net income of petitioner was determined to be \$143,209.38 and for 1943 \$110,864.94.

(c) On December 7, 1942, the legatees of the estate petitioned the Probate Court for a partial distribution of income, which was granted, and pursuant to a decree of partial distribution the sum of \$181,000.00 income was distributed to the legatees in 1942. The distributable income of the estate for the year 1942 was the sum of \$316,957.42, which latter amount petitioner contends should have been allowed as a deduction in lieu of the sum of \$181,000.00, which was allowed.

(d) During the year 1943 the estate had distributable income in the amount of \$188,297.50. The

legatees during 1943 petitioned the Probate Court for a partial distribution of income in the sum of \$96,000.00, and pursuant to decrees of partial distribution, income in that amount was distributed to the legatees during 1943. The petitioner contends that the amount of the distributable income, to-wit: \$188,297.50, should have been allowed as a deduction in lieu of the sum of [5] \$96,000.00, which was allowed.

(e) At the time the distributions of the income were made all the debts of the estate had been paid; all specific legacies had been paid; the Federal Estate Tax as disclosed by the return had been paid; all state inheritance taxes had been paid; and all that remained unpaid was a possible additional assessment for federal estate taxes and some expenses of administration. However, there were still assets constituting the corpus of the estate remaining in the hands of the executors in excess of \$1,000,000.00, which amount was far in excess of the liabilities of the estate either actual or contingent. No portion of the income from the estate was required for the payment of these liabilities and the legatees were entitled, pursuant to the Probate laws of the State of California, to have all of said income distributed and paid to them, in accordance with their respective distributive shares, during the respective taxable years, either on a petition of the respective legatees or the executors or both. If such petitions had been filed the Probate Court would have granted the same.

(f) Based upon the foregoing facts, it is petitioner's contention that pursuant to the provisions of Section 162 of the Internal Revenue Code and the provisions [6] of Income Tax Regulations 111, Section 29.162-2, the entire distributable income for each of the years involved should have been included in the legatees' individual income tax returns in the amounts that they were entitled to have distributed to them and that the petitioner (the estate) was entitled to a deduction for the full distributable income.

Wherefore, the petitioner prays that this court may hear this proceeding and determine that the petition should be allowed as deductions against income for the year 1942 the sum of \$316,957.84, and for the year 1943 the sum of \$188,297.50, and that after such deductions are allowed, that the correct amount of the petitioner's income tax liability for the respective years be recomputed in accordance with Rule 50.

PHILIP S. EHRLICH,
ALBERT A. AXELROD,

Counsel for Petitioner. [7]

State of California,
City and County of San Francisco—ss.

J. David Zellerbach, being duly sworn, deposes and says:

That he is one of the executors of the Estate of Isadore Zellerbach, Deceased, the petitioner above named; that he has read the foregoing petition or had the same read to him, and is familiar with the

statements contained therein, and that the statements contained therein are true except as to those stated to be on information and belief, and that those he believes to be true.

J. DAVID ZELLERBACH.

Subscribed and sworn to before me this 7th day of December, 1945.

[Seal] DOROTHY H. McLENNAN,
Notary Public in and for the City and County of
San Francisco, State of California. [8]
State of California,

City and County of San Francisco—ss.

Harold L. Zellerbach, being duly sworn, deposes and says:

That he is one of the executors of the Estate of Isadore Zellerbach, Deceased, the petitioner above named; that he has read the foregoing petition or had the same read to him, and is familiar with the statements contained therein, and that the statements contained therein are true except as to those stated to be on information and belief, and that those he believes to be true.

HAROLD L. ZELLERBACH.

Subscribed and sworn to before me this 7th day of December, 1945.

[Seal] DOROTHY H. McLENNAN,
Notary Public in and for the City and County of
San Francisco, State of California. [9]

EXHIBIT "A"

[Letterhead Treasury Department]

Office of Internal Revenue Agent in Charge, San
Francisco Division. IRA:90-D. LB.

Estate of Isadore Zellerbach, Deceased
J. David Zellerbach and Harold L. Zellerbach,
Executors

343 Sansome Street
San Francisco, California

Dear Messrs. Zellerbach:

You are advised that the determination of your income tax liability for the taxable years ended December 31, 1942 and December 31, 1943 discloses a deficiency of \$66,944.62 as shown in the statement attached.

In accordance with the provisions of existing internal revenue laws, notice is hereby given of the deficiency or deficiencies mentioned.

Within 90 days (not counting Sunday or a legal holiday in the District of Columbia as the 90th day) from the date of the mailing of this letter, you may file a petition with The Tax Court of the United States, as its principal address, Washington 25, D. C., for a redetermination of the deficiency or deficiencies.

Should you not desire to file a petition, you are requested to execute the enclosed form and forward it to the Internal Revenue Agent in Charge, San Francisco, 5, California for the attention of Conference Section. The signing and filing of this form

will expedite the closing of your return(s) by permitting an early assessment of the deficiency or deficiencies, and will prevent the accumulation of interest, since the interest period terminates 30 days after filing the form, or on the date assessment is made, whichever is earlier.

Very truly yours,

JOSEPH D. NUNAN, JR.,

Commissioner,

By F. M. HARLESS,

Internal Revenue Agent

in Charge.

Enclosures:

Statement

Form [10]

STATEMENT

Tax Liability for the Taxable Years Ended
December 31, 1942 and December 31, 1943

<i>Year</i>	<i>Income Tax</i>		
	<i>Liability</i>	<i>Assessed</i>	<i>Deficiency</i>
1942	\$ 98,778.19	\$ 97,606.47	\$ 1,171.72
1943	72,485.18	6,712.28	65,772.90
Totals.....	\$171,263.37	\$104,318.75	\$66,944.62

In making this determination of your income tax liability, careful consideration has been given to your protest dated February 5, 1945; to the statements made at the conferences held on February 27, 1945 and July 12, 1945 and to your claim for refund filed on August 9, 1944 in the amount of \$71,585.08 for the year 1942.

If a petition to The Tax Court of the United States is filed against the deficiency proposed here-

in, the issue set forth in your claim for refund should be made a part of the petition to be considered by The Tax Court in any redetermination of your tax liability. If a petition is not filed, the claim for refund will be disallowed and official notice will be issued by registered mail in accordance with section 3772 of the Internal Revenue Code.

Under the facts presented, it is held that none of the income of the taxable years 1942 and 1943, retained by the Estate, was placed unconditionally at the disposal of the beneficiaries. Accordingly, the deduction from income for each of these years, to which you are entitled, is limited to the amounts actually distributed within the taxable years 1942 and 1943. [11]

Adjustments to Net Income

Year: 1942

Net income as disclosed by return (Form 1041).....	\$141,756.33
Unallowable deductions and additional income:	
(a) Capital net gain.....	\$ 181.05
(b) Other income.....	1,200.00
(c) Taxes	72.00 1,453.05
Net income adjusted.....	\$143,209.38

Explanation of Adjustments

(a) Net capital gains of \$7,432.59 reported on your return are increased by \$181.05 by the following adjustments:

(1) Net short term loss eliminated.....	\$ 217.05
(2) Decrease in long term gain on sale of 1200 shares of stock of California Cotton Mills.....	36.00
Net increase.....	\$ 181.05

(1) The net short term capital loss claimed on your return was composed of the following items:

Loss on sale 50 shares Studebaker Corporation stock..\$	337.05
Gain on sale San Diego-El Cortez bonds.....	120.00
<hr/>	
Net loss.....\$	217.05

The loss claimed on 50 shares of Studebaker Corporation stock is disallowed since the loss did not result from a sale in 1942 but from worthlessness which occurred in 1935.

The short term gain of \$120.00 on San Diego-El Cortez bonds is offset by the carryover of an equal amount of net short term loss from the year 1941 under the provisions of section 117(e)(2) of the Internal Revenue Code.

(2) Long term gain of \$6,600.00 on sale of 1200 shares of California Cotton Mills is decreased in the amount of \$36.00 being 50 per cent of the expense of \$72.00 applicable to the sale.

(b) Proceeds of \$1,200.00 was realized from an option, granted for sale of 1200 shares of stock of California Cotton Mills in 1942, but not exercised. Since there was no obligation to return the option proceeds, it is held that such sum constitutes an addition to taxable income of the estate.

(c) The deduction of \$144.00 claimed on your return for Federal stamp taxes on sale of 1200 shares of stock in California Cotton Mills is decreased by \$72.00 to \$72.00 the correct amount expended for such stamps.

Computation of Alternative Tax
Year: 1942

Net income.....	\$143,209.38
Minus: Net long-term capital gain.....	7,613.64
<hr/>	
Ordinary net income.....	\$135,595.74
Less: Personal exemption.....	500.00
<hr/>	
Balance (surtax net income).....	\$135,095.74
<hr/>	
Net income subject to normal tax.....	\$135,095.74
Normal tax at 6 per cent on.....	\$135,095.74 8,105.74
Surtax on.....	135,095.74 86,865.63
<hr/>	
Partial tax.....	\$ 94,971.37
Plus: 50 per cent of net long-term gain of \$7,613.64	3,806.82
<hr/>	
Alternative tax.....	\$ 98,778.19

Computation of Tax
Year: 1942

Net income adjusted.....	\$143,209.38
Less: Personal exemption.....	500.00
<hr/>	
Balance (surtax net income).....	\$142,709.38
Net income subject to normal tax.....	142,709.38
Normal tax at 6 per cent on.....	\$142,709.38 8,562.56
Surtax on.....	142,709.38 92,880.41
<hr/>	
Total tax.....	\$101,442.97
<hr/>	
Alternative tax (in case of net long-term capital gain).....	\$ 98,778.19
<hr/>	
Correct income tax liability.....	\$ 98,778.19
Income tax assessed:	
Original, account No. 1209423—	
First California District.....	97,606.47
<hr/>	
Deficiency of income tax.....	\$ 1,171.72

Adjustments to Net Income

Year: 1943

	Income Tax Net Income	Victory Tax Net Income
Net income as disclosed by return.....	\$ 18,567.44	\$ 15,483.16
Unallowable deductions and additional income:		
(a) Expense disallowed.....	3,000.00	3,000.00
(b) Income distributable to beneficiaries decreased.....	89,328.30	89,328.30
Total	<u>\$110,895.74</u>	<u>\$107,881.46</u>
Nontaxable income and additional deductions:		
(c) Net capital gain.....	30.80	
Net income adjusted.....	<u>\$110,864.94</u>	<u>\$107,811.46</u>

Explanation of Adjustments

(a) The deduction of \$3,000.00 claimed for commission paid to Felix Kahn for services related to sale of a yacht by the estate in 1941 is disallowed since the commission expense is directly chargeable against the proceeds of such sale which were reportable in the 1941 return of the estate.

(b) The deduction of \$89,328.30 for income distributable to beneficiaries of the estate is reduced by \$89,328.30 to \$96,000.00 which was the amount of distributions paid to estate beneficiaries within the taxable year.

(c) Reported net capital gain of \$18,567.44 is reduced by \$30.80 due to omission from the return of loss resulting from the following transaction:

Sold in December, 1942, 50 shares Studebaker Corporation for.....	\$269.00
Bought on January 13, 1943, 50 shares Studebaker Corporation for.....	299.80
Short term loss realized.....	<u>\$ 30.80</u>

Computation of Alternative Tax
Year: 1943

Net income.....	\$110,864.94
Minus: Net capital gain.....	18,536.64
<hr/>	
Ordinary net income.....	\$ 92,328.30
Less: Personal exemption.....	500.00
<hr/>	
Balance (surtax net income).....	\$ 91,828.30
Net income subject to normal tax.....	91,828.30
Normal tax at 6 per cent on.....	\$91,828.30 5,509.70
Surtax on.....	91,828.30 2,847.79
<hr/>	
Partial tax.....	\$ 58,357.49
Plus: 50 per cent of excess of net long-term gain over net short term capital loss of \$18,536.64.....	9,268.32
<hr/>	
Alternative tax.....	\$ 67,625.81

Computation of Income and Victory Tax
Year: 1943

Income tax net income.....	\$110,864.94
Less: Personal exemption.....	500.00
<hr/>	
Surtax net income.....	\$110,364.94
Balance subject to normal tax.....	\$110,364.94
Normal tax at 6 per cent on \$110,364.94....	\$ 6,621.90
Surtax on.....	110,364.94 67,328.30
Total income tax.....	\$ 73,950.20
<hr/>	
Total alternative tax (in case of net long-term capital gain).....	\$ 67,625.81
Total income tax.....	67,625.81
Victory tax net income.....	\$107,811.46
Less: Specific exemption.....	624.00
<hr/>	
Income subject to victory tax.....	\$107,187.46
Victory tax before credit (5 per cent of \$107,187.46).....	5,359.37

Less: Victory tax credit.....	500.00	
Net victory tax.....		4,859.37
<hr/>		
Net income tax and victory tax.....	\$	72,485.18
Total income and victory tax liability.....		72,485.18
Income and victory tax liability disclosed by re- turn Original, Account No. 186677—First Cali- fornia District.....		6,712.28
<hr/>		
Deficiency in income and victory tax.....	\$	65,772.90

Filed Dec. 12, 1945.

[Title of Tax Court and Cause.]

ANSWER

Comes now the Commissioner of Internal Revenue, respondent above named, by his attorney, J. P. Wenchel, Chief Counsel, Bureau of Internal Revenue, and for answer to the petition filed by the above-named petitioner admits and denies as follows:

1, 2 and 3. Admits the allegations contained in paragraphs 1, 2 and 3 of the petition.

4(a) and (b). Denies that the Commissioner erred in the determination of the deficiencies as alleged in paragraph 4 of the petition and subparagraphs (a) and (b) thereunder.

5(a) and (b). Admits the allegations contained in subparagraphs (a) and (b) of paragraph 5 of the petition.

5(c). Admits that on December 7, 1942, the legatees of the estate petitioned the Probate Court for a partial distribution of income, which was

granted, and pursuant to a decree of partial [17] distribution the sum of \$181,000.00 income was distributed to the legatees in 1942; denies the remaining allegations contained in subparagraph (c) of paragraph 5 of the petition.

5(d). Admits that the legatees during 1943 petitioned the Probate Court for a partial distribution of income in the sum of \$96,000.00, and pursuant to decrees of partial distribution, income in that amount was distributed to the legatees during 1943; but denies the remaining allegations contained in subparagraph (d) of paragraph 5 of the petition.

5(e). Denies the allegations contained in subparagraph (e) of paragraph 5 of the petition.

5(f). Denies the allegations of fact contained in subparagraph (f) of paragraph 5 of the petition.

6. Denies generally and specifically each and every allegation in the petition not hereinbefore admitted, qualified or denied.

Wherefore, it is prayed that the Commissioner's determination be approved and the petitioner's appeal denied.

/s/ J. P. WENCHEL, TMM
Chief Counsel, Bureau of
Internal Revenue.

Of Counsel:

B. H. NEBLETT,
Division Counsel;
T. M. MATHER,
Special Attorney,
Bureau of Internal Revenue.

TMM:b 1/5/46

Received and filed Jan. 11, 1946. [18]

[Title of District Court and Cause.]

MOTION FOR LEAVE TO FILE
AMENDED ANSWER

Comes now the Commissioner of Internal Revenue, respondent above named, by his attorney, J. P. Wenchel, Chief Counsel, Bureau of Internal Revenue, and asks leave to file the attached amended answer in the above-entitled proceeding, and as his reasons therefor respectfully represents to the Court as follows:

The notice of deficiency from which appeal is taken sets forth net income as adjusted for the year 1942 in the sum of \$143,209.38 and a deficiency of \$1,171.72; for the year 1943 a net income adjusted of \$110,864.94, a victory tax net income adjusted of \$107,811.46 and a deficiency of \$65,772.90, whereas the correct net income as adjusted for the year 1942 is \$143,911.53 [19] and the correct deficiency is \$1,768.55; and the correct adjusted net income for income tax for 1943 is \$112,700.79, the adjusted net income for victory tax is \$109,647.31, and the correct deficiency for 1943 is \$67,425.17; so that it is necessary for the respondent to allege the above facts in support of his claim for increased deficiencies.

Wherefore, it is prayed that this motion be granted.

/s/ J. P. WENCHEL, TMM
Chief Counsel, Bureau of
Internal Revenue.

Of Counsel:

B. H. NEBLETT,
Division Counsel.

T. M. MATHER,

E. A. TONJES,

Special Attorneys,

Bureau of Internal Revenue.

EAT:ec 12/4/46.

Granted Dec. 6, 1946.

/s/ ERNEST W. VAN FOSSAN,
Judge.

Filed Dec. 6, 1946. [20]

[Title of Tax Court and Cause.]

AMENDED ANSWER

Comes now the Commissioner of Internal Revenue, respondent above named, by his attorney, J. P. Wenchel, Chief Counsel, Bureau of Internal Revenue, and for amended answer to the petition filed by the above-named petitioner, admits, denies and alleges as follows:

1, 2, and 3. Admits the allegations contained in paragraphs 1, 2, and 3 of the petition.

4(a), (b). Denies that the Commissioner erred in the determination of the deficiencies as alleged in subparagraphs (a) and (b) of paragraph 4 of the petition.

5(a), (b). Admits the allegations contained in subparagraphs (a) and (b) of paragraph 5 of the petition.

(c) to (f), inclusive. Denies the allegations contained in subparagraphs (c) to (f), inclusive, of paragraph 5 of the petition. [21]

6. Denies generally and specifically each and every allegation in the petition not hereinbefore admitted, qualified, or denied.

Further answering, respondent alleges as follows:

7. The notice of deficiency from which appeal is taken sets forth net income as adjusted for the year 1942 in the sum of \$143,209.38 and a deficiency of \$1,171.72; for the year 1943 a net income adjusted of \$110,864.94; a victory tax net income adjusted of \$107,811.46 and a deficiency of \$65,772.90, whereas the corrected net income as adjusted for the year 1942 is \$143,911.53 and the correct deficiency is \$1,768.55; and the correct adjusted net income for income tax for 1943 is \$112,700.79, the adjusted net income for victory tax is \$109,647.31, and the correct deficiencies for 1943 is \$67,425.17. Claim for the increased deficiencies for the years 1942 and 1943 is hereby demanded.

Wherefore, the respondent prays that the Court redetermine the deficiency herein to be the amount determined by the Commissioner, viz.: \$1,171.72 deficiency in income tax for the year 1942, plus an

increased deficiency in the amount of \$596.83; \$65,-772.90 deficiency in victory tax for the year 1943, plus an increased deficiency in the amount of \$1,652.27, claim for which is hereby made pursuant to the provisions of Section 274(e) of the Internal Revenue Code.

/s/ J. P. WENCHEL, TMM

Chief Counsel, Bureau of
Internal Revenue.

Of Counsel:

B. H. NEBLETT,
Division Counsel.

T. M. MATHER,

E. A. TONJES,
Special Attorneys,

Bureau of Internal Revenue.

EAT:ec 12-4-46.

Filed Dec. 6, 1946. [22]

[Title of Tax Court and Cause]

AMENDMENT TO PETITION

By leave of Court first had and obtained, the Petitioners herewith amend their Petition in the above matter by adding two subdivisions to Paragraph 5 of said Petition, to be designated, respectively "(e-1)" and "(e-2)", to-wit:

(e-1) That during the year 1942 there was distributed to the residuary legatees and devisees under the last Will and Testament of decedent, in the proportions which they took under the Will of the decedent, in addition to the income which was distrib-

uted to them, property which had a fair market value of \$1,146,000.00

(e-2) That during the year 1943 there was distributed to the residuary legatees and devisees under the last Will and [23] Testament of decedent, in the proportions which they took under the Will of decedent, in addition to the income which was distributed to them, property which had a fair market value of \$30,950.00.

PHILIP S. EHRLICH,
ALBERT A. AXELROD,
Counsel for Petitioner. [24]

State of California,
City and County of San Francisco—ss.

Harold L. Zellerbach, being duly sworn, deposes and says:

That he is one of the Executors of the last Will and Testament of Isadore Zellerbach, deceased, the Petitioner above named; that he has read the foregoing Amendment to Petition or had the same read to *them*, and is familiar with the statements therein contained, and that the statements contained therein are true except as to those stated to be on information and belief, and that those he believes to be true.

HAROLD L. ZELLERBACH,

Subscribed and sworn to before me this 5th day of December, 1946.

/s/ CLIFTON H. JACK,
Deputy Clerk,

The Tax Court of the U. S.

Filed Dec. 6, 1946. [25]

[Title of Tax Court and Cause.]

STIPULATION OF FACTS

It is hereby stipulated by and between counsel for respective parties hereto that the following facts are admitted to be true:

(1) That Isadore Zellerbach died testate on August 7, 1941, in the County of San Mateo, State of California, being at the time of his death a resident of the City and County of San Francisco, State of California; on the 2nd day of September, 1941 his will was admitted to probate by the Superior Court of the State of California, in and for the City and County of San Francisco, in those certain probate proceedings entitled "In the Matter of the Estate of Isadore Zellerbach, Deceased, No. 87721", and J. David Zellerbach, Harold L. Zellerbach and Marcus M. Baruh, who were named therein as such, were appointed Executors, and Letters Testamentary were issued to them. Marcus M. Baruh died on the 6th day of April, 1942, and ever since said date J. David [26] Zellerbach and Harold L. Zellerbach have been and now are the duly appointed, qualified and acting Executors of the Last Will and Testament of Isadore Zellerbach, deceased. A copy of the said Last Will and Testament of Isadore Zellerbach is attached hereto and marked Exhibit A.

(2) The estate filed income tax returns on the cash basis for the calendar years 1942 and 1943 with the Collector of Internal Revenue at San Francisco,

California. Copies of said returns are attached hereto and marked Exhibit C and D. (There is no Exhibit B).

(3) That on the 19th day of August, 1942, the Executors of the Last Will and Testament of the said decedent filed a petition with the Probate Court to make a partial distribution. A copy of said petition is attached hereto and marked Exhibit E.

(4) That on the 2nd day of September, 1942, the Probate Court made an order authorizing the Executors to make a partial distribution. A copy of said court order is attached hereto and marked Exhibit F.

(5) That on the 25th day of November, 1942, the Executors of the Last Will and Testament of said decedent filed a petition with the Probate Court to make a partial distribution. A copy of said petition is attached hereto and marked Exhibit G.

(6) That on the 7th day of December, 1942, the Probate Court made an order authorizing the Executors to make a partial distribution. A copy of said court order is attached hereto and marked Exhibit H. [27]

(7) That on the 25th day of November, 1942, the Executors petitioned the Probate Court for a partial distribution of the estate. A copy of said petition is attached hereto and marked Exhibit I.

(8) That on the 8th day of December, 1942, the Probate Court made and entered its Order and De-

cree of Partial Distribution. A copy of said Order and Decree of Partial Distribution is attached hereto and marked Exhibit J.

(9) That on the 26th day of October, 1942, the Executors petitioned the Probate Court for an order authorizing them to borrow a sum not to exceed \$1,000,000.00. A copy of said petition is attached hereto and marked Exhibit K. On November 6, 1942 the Probate Court made an order authorizing said Executors to borrow said sum of money and to secure the same by a pledge of certain of the assets of the estate. A copy of said order is attached hereto and marked Exhibit L.

(10) That pursuant to said authorization, the Executors borrowed from Wells Fargo Bank & Union Trust Co. the sum of \$500,000.00, and from Jennie B. Zellerbach the sum of \$318,669.31. That the indebtedness to the Wells Fargo Bank & Union Trust Co. was secured by 9,000 shares of the preferred capital stock of Crown Zellerbach Corporation belonging to said estate, which had a market value at said time of approximately \$720,000.00.

(11) That on the 31st day of December, 1942, all the distributions authorized by said Probate Court during the year 1942 had been made. [28]

(12) That on the 18th day of June, 1943, the Executors of the Last Will and Testament of said decedent filed a petition with the Probate Court to make a partial distribution. A copy of said petition is attached hereto and marked Exhibit M.

(13) That on the 7th day of July, 1943, the Probate Court made an order authorizing the Executors to make a partial distribution. A copy of said court order is attached hereto and marked Exhibit N.

(14) That on the 4th day of August, 1943, the Executors of the Last Will and Testament of said decedent filed a petition with the Probate Court to make a partial distribution. A copy of said petition is attached hereto and marked Exhibit O.

(15) That on the 18th day of August, 1943, the Probate Court made an order authorizing the Executors to make a partial distribution. A copy of said court order is attached hereto and marked Exhibit P.

(16) That on the 30th day of November, 1943, the Executors filed a petition with the Probate Court for authority to make a partial distribution. A copy of said petition is attached hereto and marked Exhibit Q.

(17) That on the 13th day of December, 1943, the Probate Court made and entered an order of decree for partial distribution. A copy of said order is attached hereto and marked Exhibit R.

(18) That on the 31st day of December, 1943, all the distributions authorized by said Probate Court during the year 1943 had been made. [29]

(19) The total net income of the petitioner for the year 1942, before any allowance for income dis-

tributed to beneficiaries during said year was \$324,209.38, which said sum is composed of ordinary income in the amount of \$316,595.74 and capital gain in the amount of \$7,613.64.

(20) The total net income of the petitioner for the year 1943, before any allowance for income distributed to beneficiaries during said year was \$206,864.94, which said sum is composed of ordinary income in the amount of \$188,328.30 and capital gain in the sum of \$18,536.64.

(21) That of the distributions made in the year 1942 referred to in Paragraph (6) hereof, \$180,297.85 was paid out of income and \$702.15 was paid out of corpus.

(22) That of the distributions made in the year 1943 referred to in Paragraph (17) hereof, \$94,164.15 was paid out of income and \$1,835.85 was paid out of corpus.

(23) That at December 31, 1943, the Federal estate tax, as disclosed by the return, had been paid.

(24) That the Commissioner subsequently determined that the petitioner was liable for a deficiency in Federal estate taxes which controversy was finally settled in November, 1946.

(25) That the fair market value at the time of distribution of the property, distributed to the legatees of the decedent by the order and decree for partial distribution of the Probate Court, made on December 8, 1942, Exhibit J attached hereto, was the sum of \$1,146,000.00. [30]

(26) That the fair market value at the time of distribution of the property, distributed to the legatees of the decedent by the order and decree for partial distribution of the Probate Court, made on July 7, 1943, Exhibit N attached hereto, was the sum of \$27,500.00.

(27) That the fair market value at the time of distribution of the property, distributed to the legatees of the decedent by the order and decree for partial distribution of the Probate Court, made on August 18, 1943, Exhibit P attached hereto, was the sum of \$3,450.00.

(28) That on January 24, 1944, Jennie B. Zellerbach filed an amended Federal income tax return with the Collector of Internal Revenue, at San Francisco, California, which amended return reported as having been distributed to her one-half of all of the income of the estate of Isadore Zellerbach, deceased, for the year 1942, to-wit, \$157,661.87.

(29) That the said Jennie B. Zellerbach included in her Federal income tax return for the year 1943, as income received by her from the estate of Isadore Zellerbach, deceased, for the year 1943, to-wit, the sum of \$92,664.15.

(30) That attached hereto, marked Exhibit S, is an audited report of the estate of Isadore Zellerbach, deceased, including the balance sheet with the statement of all the assets and liabilities of said estate as of December 31, 1942. [31]

(31) That attached hereto, marked Exhibit T, is an audited report of the estate of Isadore Zeller-

bach, deceased, including the balance sheet with the statement of all the assets and liabilities of said estate as of December 31, 1943.

Dated: December 5, 1946.

/s/ PHILIP S. EHRLICH,

/s/ ALBERT A. AXELROD,

Counsel for Petitioner.

/s/ J. P. WENCHEL,

Chief Counsel, Bureau of
Internal Revenue,

Counsel for Respondent.

Of Counsel:

B. H. NEBLETT,

Division Counsel;

T. M. MATHER,

E. A. TONJES,

Special Attorneys, Bureau of Internal
Revenue. [32]

EXHIBIT A.

I, Isadore Zellerbach of the City and County of San Francisco, State of California, being of sound and disposing mind and memory and not acting under duress, menace, fraud or the undue influence of any person whomsoever, do hereby make, publish and declare this my last will and testament, hereby revoking any and all other wills and codicils by me heretofore made.

If my beloved wife, Jennie B. Zellerbach shall have predeceased me and shall have bequeathed to

me her share of the capital stock of the Zellerbach Levison Company, a corporation, then I give and bequeath all of said shares so bequeathed to me by my wife to my three children, J. David Zellerbach, Harold L. Zellerbach and Claire Zellerbach Saroni, but in trust, nevertheless, for the following uses and purposes:

My said three trustees shall collect the dividends and income upon said stock and divide the same equally among my said three children, that is to say, one-third to each of them, or in the event of the death of any of them then the portion of the dividends and income which would have gone to such deceased child, had he or she been living, shall go to his or her heirs and said trust shall continue unless said trust property shall be sold or disposed of as a whole, as hereinafter provided, so long as any one of my three children shall survive. Upon the sale or other disposition of the said shares of Zellerbach Levison Company as a whole, or upon the death of the last survivor of my said children, said trust shall terminate and the trust property shall go to and vest in my said children in equal parts, or in the event of the death of any or all of my said children then in the heirs of such deceased child or children per stirpes and not per capita, [33] provided that in the event that any of my children shall have died leaving a will disposing of the whole or any part of such trust property which would have gone to such deceased child had he or she lived then such portion of the trust property so disposed of shall

go to the persons or person designated in and by said will to take the same.

My said three trustees shall have no power to sell, pledge, exchange or otherwise dispose of any portion of said trust property other than the whole thereof, but they shall have full power to sell, exchange or otherwise dispose of all of said trust property, or to pledge the same, as a whole upon such terms and conditions and for such price as said trustees, or a majority of them, may deem best. During the continuance of said trust by said trustees shall have all the powers which it is possible and legal for me to give to them, and such powers may be exercised by the majority of them. The only limitation upon their powers will be that they shall not, during the continuance of said trust, sell, exchange or otherwise dispose of said property or pledge the same except as a whole.

In the event that said Zellerbach Levison Company shall declare any stock dividends then such dividends shall be added to the trust property and my said trustees shall have the same powers and be subject to the same restrictions or limitations as they shall have and be subject to with respect to the original shares hereby bequeathed to them in trust.

The interest or interests of the beneficiaries of the trust herein created shall not be assignable by voluntary or involuntary assignment, or by operation of law, and/or shall not be subject to [34] the claims of their creditors or creditors of any of them.

I hereby give and bequeath to each of my grandchildren, Jane Saroni, Louis Saroni and A. B. Saroni, Jr., (children of my daughter, Claire Zellerbach Saroni), and James D. Zellerbach and Richard Zellerbach (sons of my son, J. David Zellerbach), and William J. Zellerbach, Rolinde Zellerbach and Stephen Anthony Zellerbach, (children of my son, Harold L. Zellerbach, the sum of five thousand dollars \$5,000), making a total of forty thousand dollars (\$40,000); provided, however, that said legacies may be paid by my executors either in cash or in shares of stock or other securities belonging to my estate which, in the opinion of my executors, shall be of the value mentioned, or partly in cash and partly in such shares of stock or other securities as my executors may determine, and provided further that said legacies shall not become due until and shall not be paid until my executors shall have cash or such shares of stock or other securities on hand or which, in their opinion, shall be available for the payment or satisfaction of said legacies.

I also hereby give and bequeath a like sum of five thousand dollars (\$5,000), under the same conditions and under the same provisions set forth in the foregoing paragraph, to each and every other grandchild of mine which may be born after the execution of this will.

The bequests and provisions which I have made in this my will for the beneficiaries therein named are intended by me to be the net amount or net property which each of them is to receive after the pay-

ment of all inheritance or estate taxes provided for by the laws of the State of California or otherwise, so that it may be considered that I am devising and bequeathing [35] to each of them the amount of such taxes in addition to the bequests or provisions which I have herein made for them.

I hereby give, devise and bequeath unto my dear wife, Jennie B. Zellerbach, an undivided three-sixths of all of the rest, residue and remainder of my estate, real and personal, of which I may die seized or possessed, and I hereby give, devise and bequeath the remaining undivided three-sixths of said rest, residue and remainder of my estate to my three children, J. David, Harold L. and Claire, one-sixth to each.

I nominate and appoint J. David Zellerbach, Harold L. Zellerbach and Marcus M. Baruh as executors of this my last will and testament. I hereby give my executors full, absolute and complete power and authority to sell, mortgage, pledge, exchange or otherwise dispose of or deal with the whole or any portion of my estate according to their judgment and discretion, and without any order of court whatsoever, except as to the said shares of the capital stock of the Zellerbach Levison Company which I desire to be held in trust for the uses and purposes hereinbefore stated. I direct that no bond or bonds of any kind be required of my executors or of any of them, during the administration of my estate, for any purpose.

In Witness Whereof, I have hereunto subscribed my name at the City and County of San Francisco, State of California, on this 4th day of June, 1931.

ISADORE ZELLERBACH.

In the presence of:

F. D. Madison, residing at San Rafael, California; Marshall P. Madison, residing at 3570 Clay St., San Francisco, Calif.

The foregoing instrument, consisting of three pages besides [36] this page, was at the date thereof by Isadore Zellerbach, the maker thereof, signed in our presence and in the presence of each of us, the attesting and subscribing witnesses, and at the time of his subscribing said instrument he declared to us and to each of us that it was his last will and testament, and at his request and in his presence and in the presence of each other we have subscribed our names as witnesses thereto.

F. D. MADISON,
MARSHALL P. MADISON.

EX C

Form 1041
Treasury Department
Internal Revenue Service

Page 1
1942

UNITED STATES

FIDUCIARY INCOME TAX RETURN

(FOR ESTATES AND TRUSTS)
For Calendar Year 1942

or fiscal year beginning, 1942, and ending, 1943

File this return not later than the 15th day of the third month following the close of the taxable year.

(PRINT NAMES AND ADDRESS PLAINLY BELOW)

Name of Estate or Trust ESTATE OF ISADORE ZELLERBACH, DECEASED

Name and Address of Fiduciary
J. DAVID ZELLERBACH AND HAROLD L. ZELLERBACH, Surviving Executors.
343 Sansome Street
San Francisco, California

(Do Not Use These Spaces)

File Code 3205

Serial No. 1209423

Disburse

Check First Payment

Item and Instruction No.

INCOME

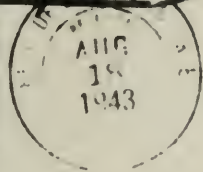
1. Dividends			\$ 323.152 80
2. Interest on bank deposits, notes, etc.			1.099 46
3. Interest on corporation bonds, etc., (except interest to be reported in item 4)	\$	\$	245 90
4. Interest on tax-free covenant bonds upon which a Federal tax was paid at source	\$	\$	
5. Interest on Government obligations, etc.: (a) From lines (e), (f), and (g), column 3 (a), Schedule B	\$	\$	
(b) From line (h) Schedule B	\$	\$	
(c) From line (i) Schedule B	\$	\$	
6. Income (or loss) from partnerships, syndicates, pools, etc., and income from other fiduciaries (Name and address) <u>Zellerbach-Levison Co., San Francisco, Calif.</u>			3.178 42
7. Rents and royalties (from Schedule C)			2.717 59
8. (a) Net gain (or loss) from sale or exchange of capital assets (from Schedule E)			7.432 59
(b) Net gain (or loss) from sale or exchange of property other than capital assets (from Schedule F)			
(c) Net profit (or loss) from trade or business (attach statement)			
10. Other income (state nature of income)			225 00
11. Total income in items 1 to 10 (enter rentable income in Schedules B and D)			\$ 338.681.47

DEDUCTIONS

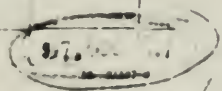
12. Interest (explain in Schedule G)	\$	1.009 71
13. Taxes (explain in Schedule G)		13.500 01
14. Other deductions authorized by law (explain in Schedule G)		119 00
15. Total deductions in items 12 to 14		
16. Balance (item 11 minus item 15)		
17. Less amount distributable to beneficiaries (item 5 (a), above, plus total of column 2, Schedule A)		
18. Net income (taxable to fiduciary) (item 16 minus item 17)		

COMPUTATION OF TAX

19. Net income (item 18 above)	\$ 21.210 32	27. Total tax (item 26 or line 14, Schedule E)	\$ 31.400 00
20. Less: Personal exemption	\$ 21.210 32	28. Less: Fiduciary's share of income tax paid at source	\$
21. Balance (surplus net income)	\$ 21.210 32	29. Fiduciary's share of income tax paid to a foreign country or United States possession (Attach Form 1116)	
22. Less: Interest on Government obligations, etc. (item 5 (b), above)	\$ 21.210 32	30. Balance of tax (item 27 minus items 28 and 29)	\$ 31.400 00
23. Balance subject to normal tax	\$ 21.210 32		
24. Normal tax (6% of item 23)	\$ 1.272 62		
25. Surplus on item 21	\$ 21.210 32		
26. Total tax (item 24 plus item 25)	\$ 22.482 94		



15.225.34
\$ 323.700.33
21.000.00
\$ 344.700.33



Schedule D.—EXPLANATION OF DEDUCTION FOR DEPRECIATION CLAIMED IN SCHEDULES C, E, AND F. (See Instruction 1.)

1. Kind of property (if building, state material of which constructed)	2. Date acquired	3. Cost or other basis (do not include land or other nondepreciable property)	4. Amount fully depreciated in one or more years	5. Depreciation claimed (or allowable) in prior years	6. Remaining cost or other basis to be recovered	7. Estimated life used in computing depreciation	8. Estimated remaining life from beginning of year	9. Depreciation allowable this year
		\$	\$	\$	\$			\$

Part II.—GAINS AND LOSSES FROM SALES OR EXCHANGES OF CAPITAL ASSETS. (See Instructions 6.)

1. Description of property (do not check "other")	2. Date acquired	3. Date sold	4. Gross sales price (amount paid)	5. Cost or other basis	6. Depreciation claimed (or allowable) since acquisition or March 1, 1913 (explain in Schedule D)	7. Gain or loss (column 4 plus column 5 minus the sum of columns 6 and 7)	8. Gain or loss to be taken into account
No. Day Year	No. Day Year						9. Percentage 10. Amount

SHORT-TERM CAPITAL GAINS AND LOSSES—ASSETS HELD NOT MORE THAN 6 MONTHS

	\$	\$	\$	\$	\$	100	\$
						100	
						100	
						100	

Total net short-term capital gain or loss (enter in line 1, column 3, of summary below)

LONG-TERM CAPITAL GAINS AND LOSSES—ASSETS HELD FOR MORE THAN 6 MONTHS

	\$	\$	\$	\$	\$	50	\$
						50	
						50	
						50	

Total net long-term capital gain or loss (enter in line 2, column 3, of summary below)

SUMMARY OF CAPITAL GAINS OR LOSSES

1. Classification	2. Net short-term capital loss of preceding taxable year (net in excess of net income for such year), but only to extent of net short-term capital gain of current year	3. Net gain or loss to be taken into account from column 10, above		4. Net gain or loss to be taken into account from partnerships and common trust funds		5. Total net gain or loss taken into account in columns 2, 3, and 4 of this summary	
		(a) Gain	(b) Loss	(a) Gain	(b) Loss	(a) Gain	(b) Loss
1. Total net short-term capital gain or loss	\$	\$	217	\$	\$	\$	217
Total net long-term capital gain or loss		7,429	64			7,429	64
3. Net gain in column 5, lines 1 and 2. (Enter as item 8(a), page 1)						7,429	59
4. Net loss in column 5, lines 1 and 2. (The amount to be entered as item 8(a), page 1, is (1) this item or (2) net income, computed without regard to capital gains or losses, or (3) \$1,000, whichever is smallest)							

COMPUTATION OF ALTERNATIVE TAX

Use only if you had an excess of net long-term capital gain over net short-term capital loss and item 21, page 1, exceeds \$15,000

1. Net income (item 18, page 1)	\$ 11,224	23	8. Normal tax (6% of line 7)	\$ 802.92	42
2. Excess of net long-term capital gain over net short-term capital loss (line 2, column 5(a), minus line 1, column 5(b), of summary above)	7,429	64	9. Surtax on line 5. (See Instruction 25)	858.60	75
3. Ordinary net income (line 1 minus line 2)	3,795		10. Partial tax (line 8 plus line 9)	1,661.52	17
4. Less: Personal exemption (item 20, page 1)	2,000	00	11. 50% of line 2	3,714.50	30
5. Balance (surtax net income)	1,795	24	12. Alternative tax (line 10 plus line 11)	9,760.62	47
6. Less: Interest on Government obligations, etc. (item 5(b), page 1). (See Instruction 22)			13. Total normal tax and surtax (item 26, page 1)	10,020.71	58
7. Balance subject to normal tax	1,795	24	14. Tax liability (line 12 or line 13, whichever is the lesser) (Enter as item 27, page 1)	4,760.62	33

State the family, fiduciary, or business relationship to you, if any, of purchaser of any of the items in Schedule F.

If any of the items were acquired by you other than by purchase, explain fully how acquired:

SHORT-TERM CAPITAL GAINS AND LOSSES -- ASSETS HELD NOT MORE THAN 6 MONTHS.

4,000 San Diego El Cortes Bonds
50 Studebaker Corporation - Common

Total net short-term capital gain or loss (enter in line 1, column 3, of summary below)

LONG-TERM CAPITAL GAINS AND LOSSES -- ASSETS HELD FOR MORE THAN 6 MONTHS

35,000 Abitibi Power & Paper Bonds
5,000 Consolidated Paper Corp. Bonds
5,000 San Diego El Cortes Bonds
100 American Hawaiian Steamship
34 American Telephone & Telegraph Co.
50 American Trust Company - Pfd.
80 Anglo California National Bank
1 Bank of America - Common
1 Bank of America - Preferred
151 Borden Company
100 Calamba Sugar Estate
1200 California Cotton Mills
1172 California Ink Co.
14 California Packing Corp. - Pfd.
50 Chase National Bank
100 Chesapeake & Ohio R.R. - Common
2 Chesapeake & Ohio R.R. - Pfd.
50 Clorox Chemical Co.
100 Consolidated Paper Corp. - Common
488 Green Zellbach Corporation - Pfd.
52 E. I. du Pont de Nemours
757 Englander Drayage Co.
2 General Motors - Common
150 Golden State Company
50 S. & G. Corp - Preferred
24 Hawaiian Pineapple
59 Hawley Pulp & Paper - Pfd.
100 Honolulu Oil Corporation
200 F. Kerillard Company
110 Lyons-Magnus, Inc.
100 Market Street Railway - Prior Pfd.
50 National City Bank

	Date Acquired	Date Sold	Sales Price	Cost	Gain or Loss	Per- cent- age	Amount
	8/7/41	1/15/42	1,600.00	1,480.00	120.00	100%	120.00
		12/28/42	269.00	606.05	337.05	100%	337.05
					(below)		217.05
	8/7/41	Dec. 1942	18,987.15	15,767.50	3,219.65	50%	1,609.82
	8/7/41	10/28/42	2,474.55	2,750.00	275.45	50%	137.78
	8/7/41	Dec. 1942	3,400.00	1,850.00	1,550.00	50%	775.00
	8/7/41	12/24/42	3,112.16	3,562.50	450.34	50%	225.17
	8/7/41	12/29/42	4,225.35	5,236.00	1,010.65	50%	505.32
	8/7/41	12/28/42	2,482.00	2,500.00	18.00	50%	9.00
	8/7/41	12/29/42	674.00	680.00	6.00	50%	3.00
	8/7/41	12/24/42	29.50	38.50	9.00	50%	4.50
	8/7/41	12/24/42	45.50	50.00	4.50	50%	2.25
	8/7/41	12/29/42	3,288.47	3,020.00	268.47	50%	134.24
	8/7/41	12/24/42	341.00	650.00	309.00	50%	154.50
	8/7/41	9/14/42	30,000.00	16,800.00	13,200.00	50%	6,600.00
	8/7/41	12/14/42	29,581.28	48,952.00	18,470.72	50%	9,235.36
	8/7/41	12/24/42	731.00	742.00	11.00	50%	5.50
	8/7/41	12/29/42	1,352.50	1,675.00	322.50	50%	161.25
	8/7/41	12/29/42	3,241.24	3,787.50	546.26	50%	273.13
	8/7/41	12/23/42	181.75	200.00	18.25	50%	9.12
	8/7/41	12/28/42	1,777.25	1,975.00	197.75	50%	98.87
	8/7/41	12/29/42	243.00	250.00	7.00	50%	3.50
	8/7/41	8/19/42	39,955.04	38,064.00	1,891.04	50%	945.52
	8/7/41	12/29/42	6,969.30	8,307.00	1,337.70	50%	668.85
	8/7/41	12/29/42	9,882.46	5,299.00	4,583.46	50%	2,291.73
	8/7/41	12/24/42	82.75	79.75	3.00	50%	1.50
	8/7/41	12/29/42	1,837.25	1,993.75	243.50	50%	121.75
	8/7/41	12/28/42	4,467.50	4,250.00	217.50	50%	108.75
	8/7/41	12/28/42	326.00	393.00	67.00	50%	33.50
	8/7/41	12/30/42	5,428.00	6,667.00	1,239.00	50%	619.50
	8/7/41	12/29/42	1,478.00	1,377.00	101.00	50%	50.50
	8/7/41	12/29/42	3,191.94	3,600.00	408.06	50%	204.03
	8/7/41	12/29/42	607.80	609.00	1.20	50%	.60
	8/7/41	12/29/42	763.00	800.00	37.00	50%	18.50
	8/7/41	12/29/42	1,377.50	1,437.50	60.00	50%	30.00

SCHEDULE 1 - GAIN AND LOSSES FROM SALES OR EXCHANGE OF CAPITAL ASSETS

	Date Acquired	Date Sold	Sales Price	Cost	Gain or Loss	Per- cent- age	Amount
300 North American Oil Consolidated	8/7/41	12/29/42	2,117.50	2,400.00	282.50	50%	141.25
1500 Occidental Petroleum	8/7/41	12/28/42	76.00	180.00	104.00	50%	52.00
50 Pacific American Fire	8/7/41	12/29/42	4.50	12.50	8.00	50%	4.00
40 Pacific Lighting Corp.	8/7/41	12/29/42	1,265.00	1,440.00	175.00	50%	87.50
75 Pennroed Corporation	8/7/41	12/29/42	228.38	243.75	15.37	50%	7.69
850 State Guaranty Corporation - Pfd.	8/7/41	12/29/42	290.40	220.00	70.40	50%	35.20
100 Tide Water Associated Oil - Pfd.	8/7/41	12/28/42	9,465.00	9,650.00	185.00	50%	92.50
3 Transamerica Corporation	8/7/41	12/29/42	17.00	13.50	3.50	50%	1.75
9268 Traung Investment Company	8/7/41	12/28/42	18,906.72	3,243.00	15,663.72	50%	7,831.86
100 Union Bag & Paper Corporation	8/7/41	12/29/42	750.50	1,162.50	412.00	50%	206.00
450 Union Oil Company of California	8/7/41	12/29/42	6,670.44	6,975.00	304.56	50%	152.28
150 Universal Consolidated Oil	8/7/41	12/29/42	1,244.75	1,125.00	119.75	50%	59.87
250 Malinalua Agricultural Company	8/7/41	12/29/42	5,562.50	6,625.00	1,062.50	50%	531.25
40 William Taylor Corporation	8/7/41	0 & B 42	2,800.00	1,280.00	1,520.00	50%	760.00
Total net long-term capital gain or loss (enter in line 2, column 3, of summary below)							<u>7,649.24</u>

a-6

to: Taxpayer received from John Elsbach of Los Angeles \$1.00 per share for an option on 1,200 shares of California Cotton Mills stock, making a total sum of \$1,200.00. The option was for a definite length of time. The option was not exercised and at its expiration an extension was granted. The deal was not concluded inasmuch as the optionee failed to pay the balance due. Subsequently the stock was sold to a third person having no connection with Mr. Elsbach. Thereupon taxpayer authorized the return of the \$1.00 per share to Mr. Elsbach and gave the money to a third person for this purpose. Taxpayer asserts that the sum of \$1,200.00 is not taxable income under the Internal Revenue Code.

a.7

F-1209423 Page 1
1942

Form 1041
Treasury Department
Internal Revenue Service

AMENDED RETURN
UNITED STATES

FIDUCIARY INCOME TAX RETURN

(FOR ESTATES AND TRUSTS)
For Calendar Year 1942

or fiscal year beginning _____, 1942, and ending _____, 1943

File this return not later than the 15th day of the third month following the close of the taxable year.

(PRINT NAMES AND ADDRESS PLAINLY BELOW)

Name of Estate or Trust ESTATE OF ISADORE ZELLERBACH, DECEASED
J. DAVID ZELLERBACH AND HAROLD L. ZELLERBACH, SURVIVING EXECUTORS
343 Sansome Street
San Francisco, California

Name and Address of Fiduciary

(Do Not Use These Spaces)

File Code 3205

Serial No. _____

District 1-1st

DEC 14 1942

Cash _____ Check _____ M. O. _____

FIRST PAYMENT

INCOME		
1. Dividends	\$23.152	80
2. Interest on bank deposits, notes, etc.	1.099	46
3. Interest on corporation bonds, etc., (except interest to be reported in item 4)	845	90
4. Interest on tax-free covenant bonds upon which a Federal tax was paid at source		
5. Interest on Government obligations, etc.: (a) From lines (e), (f), and (g), column 3 (a), Schedule B		
(b) From line (A) Schedule B		
(c) From line (f) Schedule B		
6. Income (or loss) from partnerships, syndicates, pools, etc., and income from other fiduciaries (Name and address)	3.178	42
7. Rents and royalties (from Schedule C)	2.747	50
8. (a) Net gain (or loss) from sale or exchange of capital assets (from Schedule E)	7.432	59
(b) Net gain (or loss) from sale or exchange of property other than capital assets (from Schedule F)		
Net profit (or loss) from trade or business (attach statement)		
10. Other income (state nature of income)	225	00
11. Total income in items 1 to 10 (enter non-taxable income in Schedules B and F)	3338.681	67
DEDUCTIONS		
12. Interest (explain in Schedule C)	\$ 1.909	71
13. Taxes (explain in Schedule C)	13.566	01
14. Other deductions authorized by law (explain in Schedule C)	449	62
15. Total deductions in items 12 to 14	15.925	34
16. Balance (item 11 minus item 15)	\$322.756	33
17. Less amount distributable to beneficiaries (item 5 (a), above, plus total of column 2, Schedule A)	315.323	74
18. Net income (taxable to fiduciary) (item 16 minus item 17)	\$ 7.432	59
COMPUTATION OF TAX		
19. Net income (item 18 above)	\$7.432	59
20. Less: Personal exemption	\$6.232	00
21. Balance (surplus net income)	\$1.200	59
22. Less: Interest on Government obligations, etc. (item 5 (b), above)	\$6.232	59
23. Balance subject to normal tax	\$ 5.968	00
24. Normal tax (6% of item 23)	\$ 358.080	00
25. Surplus on item 21	\$1.200	59
26. Total (item 24 plus item 25)	\$1.619.080	00
27. Total tax (item 26 or line 14, Schedule E)	\$1.619.080	00
28. Less: Fiduciary's share of income tax paid at source		
29. Fiduciary's share of income tax paid to a foreign country or United States possession (Attach Form 1116)		
30. Balance of tax (item 27 minus items 28 and 29)	\$1.619.080	00

Schedule B.—EXPLANATION OF DEDUCTION FOR DEPRECIATION CLAIMED IN SCHEDULES C, E, AND F. (See Instruction 1.)

1. Kind of property (if buildings, state method of which constructed)	2. Date acquired	3. Cost or other basis (do not include land or other nondepreciable property)	4. Assets fully depreciated in tax at end of year	5. Depreciation allowed (or allowable) in prior years	6. Remaining cost or other basis to be recovered	7. Estimated life used in computing depreciation	8. Estimated remaining life from beginning of year	9. Depreciation allowable this year
		\$	\$	\$	\$			\$

Schedule E.—GAINS AND LOSSES FROM SALES OR EXCHANGES OF CAPITAL ASSETS. (See Instruction 8.)

1. Kind of property (if necessary, attach statement of depreciation details not shown below)	2. Date acquired Mo. Day Year	3. Date sold Mo. Day Year	4. Gross sales price (net of return)	5. Cost or other basis	6. Expenses of sale and cost of improvements subsequent to acquisition or March 1, 1913	7. Depreciation allowed (or allowable) since acquisition or March 1, 1913 (explain in Schedule D)	8. Gain or loss (plus or minus 4 plus column 7 minus the sum of columns 5 and 6)	Gain or loss to be taken into account	
								9. Percentage	10. Amount

SHORT-TERM CAPITAL GAINS AND LOSSES—ASSETS HELD NOT MORE THAN 6 MONTHS

			\$	\$	\$	\$	\$	100	\$
								100	
								100	
								100	
								100	

Total net short-term capital gain or loss (enter in line 1, column 3, of summary below).....

LONG-TERM CAPITAL GAINS AND LOSSES—ASSETS HELD FOR MORE THAN 6 MONTHS

			\$	\$	\$	\$	\$	50	
								50	
								50	
								50	

Total net long-term capital gain or loss (enter in line 2, column 3, of summary below).....

SUMMARY OF CAPITAL GAINS OR LOSSES

1. Classification	2. Net short-term capital loss of preceding taxable year (not in excess of net income for such year), but only to extent of net short-term capital gain of current year	3. Net gain or loss to be taken into account from column 10, above		4. Net gain or loss to be taken into account from partnerships and common trust funds		5. Total net gain or loss taken into account in columns 2, 3, and 4 of this summary	
		(a) Gain	(b) Loss	(a) Gain	(b) Loss	(a) Gain	(b) Loss
1. Total net short-term capital gain or loss	\$	\$	\$	\$	\$	\$	\$
Total net long-term capital gain or loss	\$	\$	\$	\$	\$	\$	\$

2. Net gain in column 5, lines 1 and 2. (Enter as item 8(a), page 1).....

4. Net loss in column 5, lines 1 and 2. (The amount to be entered as item 8 (a), page 1, is (1) this item or (2) net income, computed without regard to capital gains or losses, or (3) \$1,000, whichever is smallest).....

COMPUTATION OF ALTERNATIVE TAX

Use only if you had an excess of net long-term capital gain over net short-term capital loss and item 21, page 1, exceeds \$18,000

1. Net income (item 18, page 1).....	\$	8. Normal tax (6% of line 7).....	\$
2. Excess of net long-term capital gain over net short-term capital loss (line 2, column 5 (a), minus line 1, column 5 (b), of summary above).....		9. Surtax on line 5. (See Instruction 25).....	
3. Ordinary net income (line 1 minus line 2).....	\$	10. Partial tax (line 8 plus line 9).....	\$
4. Loss: Personal exemption (item 20, page 1).....	\$	11. 50% of line 2.....	
5. Balance (surplus net income).....	\$	12. Alternative tax (line 10 plus line 11).....	\$
6. Loss: Interest on Government obligations, etc. (item 5 (b), page 1). (See Instruction 22).....		13. Total normal tax and surtax (item 26, page 1).....	
7. Balance subject to normal tax.....	\$	14. Tax liability (line 12 or line 13, whichever is the lesser) (Enter as item 27, page 1).....	\$

State the family, fiduciary, or business relationship to you, if any, of purchaser of any of the items in Schedule E:

If any of the items were acquired by you other than by purchase, explain fully how acquired:

ESTATE OF ISADORE ZELLERBACH
STATEMENT WITH RESPECT TO AMENDED RETURN FOR 1942

On December 7, 1942 the Superior Court in and for the City and County of San Francisco granted a partial distribution of income, \$181,000.00, requested by the legatees of Isadore Zellerbach. In computing taxable income of the Estate for 1942, said sum was deducted as income distributed to legatees of the Estate.

Sec. 29.162-2 of Regulations 111 provides that "income which becomes payable" means income to which the legatee has a present right whether or not such income is actually paid. Inasmuch as the legatees had such right and exercised it even tho not for the full amount of the income, the Estate is filing an amended return for 1942 and a claim for taxes paid thereon and is advising the legatees that the distributive share of each one should be included in his individual income tax return for 1942. *****

Schedules supporting income and deductions, also details of non-taxable income, are on the original return and not reproduced herewith.

ACCEPTED
Form 1041
Treasury Department
Internal Revenue Service

EX D

UNITED STATES

J.E.S. Form 1
1943

FIDUCIARY INCOME AND VICTORY TAX RETURN

(FOR ESTATES AND TRUSTS)
For Calendar Year 1943

or fiscal year beginning _____, 1943, and ending _____, 1944

File this return not later than the 15th day of the 4th month following the close of the taxable year.

(JOINT TENANTS AND ANNUAL PAYEE BELOW)

Name of Estate or Trust ESTATE OF ISADORE ZELLERBACH
CHECK (X) WHETHER ESTATE OR TRUST ☐

J.D. and Harold L. Zellerbach

Name and Address of Fiduciary
343 Sansome Street 692
San Francisco, California

(Do Not Use These Spaces)

File Code 3205
18E577

Serial No. 1-CALL

Date MAR 15 1944

Cash 112 Check 0 M.O. 0

FIRST PAYMENT

INCOME

	Column 1 Income Tax Net Income	Column 2 Victory Tax Net Income
1. Dividends	\$220 177 99	\$220 177 99
2. Interest on bank deposits, notes, corporation bonds, etc. (Except interest reported in item 3)	952 01	952 01
3. Interest on tax-free covenant bonds upon which a Federal income tax was paid at source		
4. Interest on Government obligations, etc.; (a) From lines (e), (f), and (g), column 3 (a), Schedule B		
(b) From line (h), Schedule B		
(c) From line (i), Schedule B		
5. Income (or loss) from partnerships, syndicates, pools, etc., and income from other fiduciaries (Name and address)	2 395 05	2 395 05
6. Rents and royalties (from Schedule C)	768 22	768 22
7. (a) Net gain (or loss) from sale or exchange of capital assets (from Schedule E)	18 567 44	
(b) Net gain (or loss) from sale or exchange of property other than capital assets (from Schedule F)		
8. Net profit (or loss) from trade or business. (Attach statement)		
9. Other income. (State nature of income)		
10. Total income in items 1 to 9. (Enter maintainable income in Schedules B and H)	\$242 860 74	\$224 293 27

DEDUCTIONS

11. Interest. (Explain in Schedule C)	\$ 15 920 55	XXXXXX XX
12. Taxes. (Explain in Schedule C)	16 424 09	XXXXXX XX
13. Other deductions authorized by law. (Explain in Schedule C)	6 620 33	23 481 81
14. Total deductions in items 11 to 13	\$ 38 964 97	23 481 81
15. Balance (item 10 less item 14)	\$203 895 74	\$200 811 46
16. Less amount distributable to beneficiaries (item 4 (a), above, plus total of column 2, Schedule A)	185 328 30	185 328 30
17. Income Tax net income (taxable to fiduciary) (item 15, column 1, less item 16, column 1)	\$ 18 567 44	XXXXXX XX
18. Victory Tax net income (taxable to fiduciary) (item 15, column 2, less item 16, column 2)	XXXXXX XX	\$ 15 483 16

COMPUTATION OF TAX

19. Income Tax net income (item 17 above)	\$ 18 567 44	29. Victory Tax net income (item 18 above)	\$ 15 483 16
20. Less: Personal exemption	500 00	30. Less: Specific exemption	624 00
21. Balance (surtax net income)	\$ 18 067 44	31. Income subject to Victory Tax (item 29 less item 30)	\$ 14 859 16
22. Less: Interest on Government obligations, etc. (item 4 (b), above)		32. Victory Tax before credit (5% of item 31)	\$ 742 95
23. Balance subject to normal tax	\$ 18 067 44	33. Victory Tax credit: 25% of item 32, but not more than \$500	185 74
24. Normal tax (6% of item 23)	\$ 1 084 05	34. NET VICTORY TAX (item 32 less item 33)	\$ 557 21
25. Surtax on item 21	5 071 02	35. Total of items 28 and 34	\$
26. Total Income Tax (item 24 plus item 25) (or line 14, Schedule E)	\$	36. Less: Fiduciary's share of Income Tax paid at source on tax-free covenant bond interest	
27. Less: Fiduciary's share of income tax paid to a foreign country or U. S. possession (Attach Form 1116)		37. BALANCE OF INCOME AND VICTORY TAX	\$ 6 712 28
28. BALANCE OF INCOME TAX	\$ 6 155 07		



Page 2

Schedule A.—BENEFICIARIES' SHARES OF INCOME AND CREDITS. (Include as beneficiaries persons to whom amounts were paid or set aside for religious, charitable, etc., purposes.) (See instructions 4 and 16)

1. Name and address of each beneficiary (Designate nonresident alien)	2. Taxable income exclusive of interest on Government obligations subject to cur- tesy only, and dividends to be reported in column 9	3. Federal income tax paid at source (2% of gross amount in item 2, page 1, less item 30, page 1)	4. Income and profits taxes paid to a foreign country or United States possession
(a) _____	\$ _____	\$ _____	\$ _____
(b) _____	\$ _____	\$ _____	\$ _____
(c) _____	\$ _____	\$ _____	\$ _____
(d) _____	\$ _____	\$ _____	\$ _____
(e) _____	\$ _____	\$ _____	\$ _____
(f) _____	\$ _____	\$ _____	\$ _____
(g) _____	\$ _____	\$ _____	\$ _____
(h) _____	\$ _____	\$ _____	\$ _____
Total of beneficiaries' shares	\$ _____	\$ _____	\$ _____

CONTINUATION OF SCHEDULE A.—BENEFICIARIES' SHARES OF INCOME AND CREDITS

5. Use letter corresponding to above to identify beneficiary	6. Wholly tax-exempt obligations (shares of the sum of lines (a), (b), (c), and (d) of Schedule B)		Partially tax-exempt				9. Dividends on share accounts of Federal savings and loan associations (shares of line (a), column 30, Schedule B)
	a. Principal	b. Interest	a. Principal	b. Interest less amortizable bond premium	a. Principal	b. Interest less amortizable bond premium	
(a) _____	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____
(b) _____	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____
(c) _____	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____
(d) _____	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____
(e) _____	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____
(f) _____	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____
(g) _____	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____
(h) _____	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____
Total	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____

Schedule B.—INTEREST ON GOVERNMENT OBLIGATIONS, ETC. (See instruction 4)

1. Obligations or securities	2. Amount owned at end of year	3. Interest (and dividends subject to curtesy only) received or accrued during the year	4. Filibuster's share of interest exempt from taxation	5. Filibuster's share of interest on amount in column 4 (subject to curtesy only)
(a) Obligations of a State, Territory, or political subdivision thereof, or the District of Columbia, or United States possessions	\$ _____	\$ _____	All _____	XXXXXX XX
(b) Obligations issued prior to March 1, 1941, under Federal Farm Loan Act, or under such Act as amended	\$ _____	\$ _____	All _____	XXXXXX XX
(c) Obligations of United States issued on or before September 1, 1917	\$ _____	\$ _____	All _____	XXXXXX XX
Treasury Notes issued prior to December 1, 1940, Treasury Bills and Treasury Certificates of Indebtedness issued prior to March 1, 1941	\$ _____	\$ _____	All _____	XXXXXX XX
(d) United States Savings Bonds and Treasury Bonds issued prior to March 1, 1941	\$ _____	\$ _____	\$ _____	\$ _____
(e) Obligations of instrumentalities of the United States (other than obligations to be reported in (b) above) issued prior to March 1, 1941	\$ _____	\$ _____	\$ _____	\$ _____
(f) Dividends on share accounts in Federal savings and loan associations in case of shares issued prior to March 28, 1942	XXXXXX XX	\$ _____	None	XXXXXX
(g) Total. (Include in item 4 (b), page 1)	\$ _____	\$ _____	\$ _____	\$ _____

(f) Treasury Notes issued on or after December 1, 1940, and obligations issued on or after March 1, 1941, by the United States or any agency or instrumentality thereof. (Enter amount of interest as item 4 (c), page 1)	Amount owned at end of year	Interest received or accrued during the year (subject to curtesy and curtesy)
\$ _____	\$ _____	\$ _____

Schedule C.—INCOME FROM RENTS AND ROYALTIES. (See instruction 6)

1. Kind of property	2. Amount	3. Depreciation (explain in Schedule D)	4. Repairs (explain below)	5. Other expenses (explain below)	6. Net profit. (Enter on item 6, page 1)
\$ _____	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____
\$ _____	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____
\$ _____	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____
\$ _____	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____
\$ _____	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____
\$ _____	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____
\$ _____	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____
\$ _____	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____
\$ _____	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____

Explanation of deductions claimed in columns 4 and 5 _____

一	二	三	四	五	六	七	八	九	十	十一	十二	十三	十四	十五	十六	十七	十八	十九	二十	二十一	二十二	二十三	二十四	二十五	二十六	二十七	二十八	二十九	三十	三十一	三十二	三十三	三十四	三十五	三十六	三十七	三十八	三十九	四十	四十一	四十二	四十三	四十四	四十五	四十六	四十七	四十八	四十九	五十	五十一	五十二	五十三	五十四	五十五	五十六	五十七	五十八	五十九	六十	六十一	六十二	六十三	六十四	六十五	六十六	六十七	六十八	六十九	七十	七十一	七十二	七十三	七十四	七十五	七十六	七十七	七十八	七十九	八十	八十一	八十二	八十三	八十四	八十五	八十六	八十七	八十八	八十九	九十	九十一	九十二	九十三	九十四	九十五	九十六	九十七	九十八	九十九	一百
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PARTIAL ASSETS. (See Instruction 7)									
1. Kind of property (if necessary, attach statement of descriptive details not shown below)	2. Date acquired	3. Date sold	4. Gross sales price (contract price)	5. Cost or other basis	6. Expenses of sale and cost of improvement (to be added to acquisition or March 1, 1913)	7. Depreciation allowed (or allowable) since acquisition or March 1, 1913 (include in Schedule D)	8. Gain or loss (columns 4 plus column 7 less the sum of columns 5 and 6)	9. Percentage	10. Amount
Mo. Day Year	Mo. Day Year								
GRAND TOTAL GAIN OR LOSS									

ASSETS HELD NOT MORE THAN 6 MONTHS									
\$	\$	\$	\$	\$	\$	\$	100	\$	
							700		
							100		
Total net short-term capital gain or loss (enter in line 1, column 2, of summary below)								100	\$

ASSETS HELD FOR MORE THAN 6 MONTHS										
		\$	\$	\$	\$	\$		50	\$	
								50		
								50		
Total net long-term capital gain or loss (enter in line 2, column 2, of summary below)									50	\$

1. Classification	2. Net gain or loss to be taken into account from column 10, above		3. Net gain or loss to be taken into account from partnerships and common trust funds		4. Total net gain or loss taken into account in columns 2 and 3 of this summary	
	(a) Gain	(b) Loss	(a) Gain	(b) Loss	(a) Gain	(b) Loss
1. Total net short-term capital gain or loss	\$	\$	\$	\$	\$	\$
2. Total net long-term capital gain or loss	\$	\$	\$	\$	\$	\$
3. Capital loss carry-over (attach statement)						
4. Net gain in column 4, lines 1, 2, and 3. (Enter as item 7 (a), page 1)					XXXXXX	\$
5. Net loss in column 4, lines 1, 2, and 3. (The amount to be entered as item 7 (a), page 1, is (1) this item or (2) net income, computed without regard to capital gains or losses, or (3) \$1,000, whichever is smallest)					\$	XXXXXX
					XXXXXX	\$

COMPUTATION OF ALTERNATIVE TAX		*****	
Use only if you had an excess of net long-term capital gain over net short-term capital loss and item 21, page 1, exceeds \$10,000			
1. Net income (item 17, page 1)	\$		
2. Excess of net long-term capital gain over net short-term capital loss (line 2, column 4 (a), less the sum of line 1, column 4 (b), and line 3 of summary above)	\$		
3. Ordinary net income (line 1 less line 2)			
4. Less: Personal exemption (item 20, page 1)	\$		
5. Balance (surplus net income)	\$		
6. Less: Interest on Government obligations, etc. (item 4 (b), page 1)	\$		
7. Balance subject to normal tax	\$		
8. Normal tax (6% of line 7)			\$
9. Surplus on line 5. (See Instruction 25)			\$
10. Partial tax (line 8 plus line 9)			\$
11. 50% of line 2			\$
12. Alternative tax (line 10 plus line 11)			\$
13. Total normal tax and surplus (item 24 plus item 25, page 1)			\$
14. Tax liability (line 12 or line 13, whichever is the lesser). (Enter as item 26, page 1)			\$

If any of the items were acquired by you other than by purchase, explain fully how acquired.

Schedule F—GAINS AND LOSSES FROM SALES OR EXCHANGES OF PROPERTY OTHER THAN CAPITAL ASSETS. (See Instructions)

1. Kind of property	2. Date acquired	3. Gross sales price (contract price)	4. Cost or other basis	5. Expenses of sale and cost of improvements (attach schedule showing itemization or Form T. 101)	6. Depreciation allowed (attach schedule showing itemization or Form T. 101)

Total net gain (or loss). (Enter on line 7 (A), page 7)

State the family, fiduciary, or business relationship to you, if any, of purchaser of any of the above items. If any of the above items were acquired by gift other than by purchase, explain fully how acquired.

Schedule G—EXPLANATION OF DEDUCTIONS CLAIMED IN ITEMS 11, 12, and 13. (See Instructions 11, 12, and 13)

1. Item No.	2. Explanation	3. Amount	4. Item No. (continued)	5. Explanation (continued)	6. Amount (continued)

Schedule H—NONTAXABLE INCOME OTHER THAN INTEREST REPORTED IN SCHEDULE E. (See Instruction 20)

1. Source of Income	2. Nature of Income	3. Amount

QUESTIONS

1. Was a return of income filed for the preceding year? Yes. If so, to which collector's office was it sent? San Francisco.
2. Date estate or trust was created August 7, 1941.
3. If copy of will or trust instrument and statement required under Instruction I have been previously furnished, state when and where filed.
4. Check whether this return was prepared on the cash ☒ or accrual ☐ basis.
5. Did the estate or trust at any time during its taxable year have in its employ more than eight individuals? (Answer "Yes" or "No"). No. If answer is "Yes," has the estate or trust in this return taken a deduction for any amount of wages or salaries representing an increase or decrease in rate? (Answer "Yes" or "No"). No. If answer to second question is "Yes," attach a statement explaining all such increases or decreases. If any of such increases or decreases received the prior approval of the National War Labor Board or the Commissioner of Internal Revenue as stated in Instruction 8, attach also a copy of the authorization for each of such increases or decreases.
6. Did the estate or trust at any time during the taxable year own directly or indirectly any stock of a foreign corporation or a personal holding company as defined in section 301 of the Internal Revenue Code? (Answer "Yes" or "No"). No. If answer is "Yes," attach schedule as required by Instruction Q.
7. If return is for a trust, state name and address of grantor.
8. If return is for an estate, has a United States Estate Tax Return been filed? (Answer "Yes" or "No"). Yes. If answer is "No," will such a return be filed? "Yes" ☐ "No" ☐ "Uncertain" ☐ (Check which.)

AFFIDAVIT (See Instruction F)

I swear (or affirm) that this return (including any accompanying schedule and statements) has been examined by me, and to the best of my knowledge and belief, is a true, correct, and complete return.

Joseph C. Meyer 1944
(Signature of person making this statement or agent) (Date)

CERTIFIED PUBLIC ACCOUNTANT.
(Place of firm or employer, if any)

Subscribed and sworn to before me this 19th day of February, 1944

Subscribed and sworn to before me this 15th day of March, 1944

Jean M. Williamson 1944
(Signature of official) (Date)
NOTARY PUBLIC
In and for the City and County of San Francisco, State of California.
My Commission Expires January 2, 1945

Harold S. Cohen 1944
(Signature of official) (Date)
NOTARY PUBLIC IN AND FOR THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA.
MY COMMISSION EXPIRES JANUARY 10, 1945

B4

ESTATE OF ISADORE ZELLERBACH - 1943

SCHEDULE G

INTEREST

Net Income
I T V T

State of California	\$ 78.10		
Wells Fargo Bank	10,789.87		
Province of Quebec	52.58		
J. B. Zellerbach	<u>5,000.00</u>	<u>\$ 15,920.55</u>	\$ 15,920.55

TAXES

Social security	\$ 25.34		
Real property	623.84		
Auto	22.70		
Documentary stamps	<u>269.05</u>	940.93	940.93
California income		<u>15,483.16</u>	
		<u>\$ 16,424.09</u>	

OTHER DEDUCTIONS

Bookkeeper	\$ 2,508.60		
Insurance	5.02		
K'Thanga expense	106.71		
Audit	1,000.00		
Commissions	<u>3,000.00</u>	<u>6,620.33</u>	<u>6,620.33</u>
			<u>\$ 23,481.81</u>

SCHEDULE A

Federal State

Jennie B. Zellerbach, 343 Sansome Street, S.F.	\$ 92,664.15	\$100,405.73
J. D. Zellerbach, 343 Sansome Street, S.F.	30,888.05	33,468.58
Harold Zellerbach, 343 Sansome Street, S.F.	30,888.05	33,468.58
Claire Z. Saroni, 343 Sansome Street, S.F.	<u>30,888.05</u>	<u>33,468.57</u>
	<u>\$185,328.30</u>	<u>\$200,811.46</u>

NOTE: On December 13, 1943 a distribution of income, \$96,000.00 was authorized by court order to J. D. and Harold Zellerbach and Claire Saroni. The net income of the estate is deemed to be distributable under Section 162-2 of Regulations 111.

ESTATE OF ISADORE ZELLERBACH - 1943

SCHEDULE E

SAS LONG TERM

	Date Acquired	Date Sold	Proceeds	Cost	Gain
104 National Automotive Fibres Inc.	Aug 7/41	May 22	\$46,041.25	\$19,216.00	\$26,825.25
125 Steeple Trueng Lithograph Corp. Prd.	do	Apr 22	11,250.00	12,500.00	(1,250.00)
125 Sunset Press	do	Jan 13	11,385.00	6,325.00	5,060.00
1170 Thomas Allee Corp - A	do	Jun 11	1,392.30	514.80	877.50
200 Wilson Jones Company	do	Mar 14	2,119.62	1,600.00	519.62
\$9500 San Diego--El Cortez	do	Jun 1	\$ 617.50	3,515.00	5,102.50

Recognized--Federal - 50%

do --California - 80%

RENTS

Tux Street lots
rentals\$ 945.00
176.78

\$ 768.22

PARTNERSHIP

Zellerbach - Lawson

\$ 2,395.05

EXHIBIT E

In the Superior Court of the State of California in
and for the City and County of San Francisco.

Dept. 9—No. 87721

In the Matter of the Estate of
ISADORE ZELLERBACH

Deceased.

PETITION FOR PARTIAL DISTRIBUTION

To the Honorable, the Superior Court of the State
of California, in and for the City and County of
San Francisco:

The Petition of J. David Zellerbach and Harold
L. Zellerbach respectfully shows:

1. That your petitioners are the duly appointed,
qualified and acting executors of the last will and
testament of Isadore Zellerbach, deceased.

2. That said decedent died testate, and letters
testamentary were issued to your petitioners and to
Marcus M. Baruh, now deceased, on September 2,
1941; that more than four months have elapsed since
the issuance of such letters testamentary.

3. That the total value of said estate, as shown
by the inventory and appraisal on file herein, is
\$4,754,671.56; that the time for filing claims against
said estate has expired; that all claims which have
been filed have been allowed, approved and [56]
paid; that the expenses of administration have not
been paid as yet, but there will be sufficient assets

with which to pay said expenses of administration, even if the legacies hereinafter described are allowed and paid.

4. That the inheritance taxes due the State of California have not been determined as yet; that the petitioners are informed and believe, and therefore allege that the State Controller will consent in writing to a partial distribution; that all personal property taxes due and payable by said estate have been paid.

5. That under the provisions of the last will and testament of decedent, admitted to probate herein, it is provided as follows:

“I hereby give and bequeath to each of my grandchildren, Jane Saroni (now known as Jane Saroni Washburn), Louis Saroni and A. B. Saroni, Jr., (children of my daughter, Claire Zellerbach Saroni) and James D. Zellerbach and Richard C. Zellerbach, (sons of my son, J. David Zellerbach) and William J. Zellerbach, Rolinde Zellerbach, (now known as Rolinde Zellerbach Loew) and Stephen Anthony Zellerbach, (children of my son, Harold L. Zellerbach), the sum of five thousand dollars (\$5,000) making a total of forty thousand dollars (\$40,000); provided, however, that said legacies may be paid by my executors either in cash or in shares of stock or other securities belonging to my estate which, in the opinion of my executors, shall be of the value mentioned, or partly in cash and partly in such shares of stock or other securities as my executors may determine,

and provided further that said legacies shall not become due until and shall not be paid until my executors shall have cash or such shares of stock or other securities on hand or which, in their opinion, shall be available for the payment or satisfaction of said legacies.”

6. That the residue of the estate of decedent is distributed, one-half to Jennie B. Zellerbach, widow of decedent, and one-half, equally between J. David Zellerbach, Harold L. Zellerbach and Claire Z. Saroni, children of decedent.

7. That your petitioners hereby request the distribution of the legacies to the grandchildren, hereinabove described; that [57] it is not proposed to distribute at this time any of the residue of the estate; that as provided in said will the executors, your petitioners herein, may pay said legacies either in cash or in shares of stock, or other securities belonging to the estate, or partly in cash and partly in such shares of stock, or other securities, as the executors may determine; that the executors desire to pay said legacies by delivering to each of said grandchildren, so designated, sixty-one (61) shares of the preferred capital stock of Crown Zellerbach Corporation, all of which shares of stock are in the hands of the executors, and the sum of \$5.62 in cash; that the average market price on the San Francisco Stock Exchange between the bid and asking prices for said stock as of the date of this petition, to-wit, August 18, 1942, is $81\frac{7}{8}$, or for said sixty-one (61) shares a total value of \$4,994.38, which, with said

sum of \$5.62 in cash to be distributed to each of said grandchildren, equals the sum of \$5,000.00, the amount of their respective legacies.

8. That all of the aforesaid legacies may be distributed without injury to the estate or any person interested therein, and your petitioners request that the court dispense with the necessity of any legatee executing and filing a bond to your petitioners.

Wherefore, petitioners pray that the clerk of the above entitled court shall set this petition for hearing by the court; that notice of the time and place of such hearing shall be given in the manner and form required by law; that an order be made distributing to each of the following persons, to-wit: Jane Saroni Washburn, Louis Saroni and A. B. Saroni, Jr., James D. Zellerbach, Jr., Richard C. Zellerbach, William J. Zellerbach, Rolinde Zellerbach Loew and Stephen Anthony [58] Zellerbach, sixty-one (61) shares of the preferred stock of Crown Zellerbach Corporation and the sum of Five and 62/100 dollars (\$5.62) in cash, in full payment and discharge of their respective legacies in the above entitled estate; that the court make an order dispensing with the execution and filing of a bond by any of said persons, and that this court make all necessary orders as may be meet and proper in the premises.

/s/ J. DAVID ZELLERBACH,

/s/ HAROLD L. ZELLERBACH,

Executors and Petitioners.

/s/ PHILIP S. EHRLICH,

Attorney for Executors and
Petitioners. [59]

State of California,
City and County of San Francisco—ss.

J. David Zellerbach and Harold L. Zellerbach,
being duly sworn, each for himself and not one for
the other, depose and say:

That he has read the within and foregoing Peti-
tion for Partial Distribution and knows the contents
thereof; that the same is true of his own knowledge,
except as to the matters therein stated on informa-
tion and belief, and as to those matters he believes
it to be true.

J. DAVID ZELLERBACH,
HAROLD L. ZELLERBACH.

Subscribed and sworn to before me this 19th day
of August, 1942.

[Seal] DOROTHY H. McLENNAN,
Notary Public in and for the City and County of
San Francisco, State of California.

[Endorsed]: Filed Aug. 19, 1942.

EXHIBIT F

In the Superior Court of the State of California in
and for the City and County of San Francisco.

Dept. 9. No. 87721.

In the Matter of the Estate of

ISADORE ZELLERBACH,

Deceased.

ORDER AND DECREE FOR PARTIAL
DISTRIBUTION

J. David Zellerbach and Harold L. Zellerbach, Executors of the Last Will and Testament of Isadore Zellerbach, deceased, having filed herein on the 19th day of August, 1942, their petition praying for a partial distribution of the above entitled estate, and said petition this day coming on regularly to be heard, and proof having been made to the satisfaction of the court, the court finds that notice of hearing of said petition has been regularly given for the period and in the manner and form required by law;

The court, after hearing the evidence, finds that all the allegations of said petition are true; that the time for filing claims against said estate has expired; that all claims which have been filed, have

been allowed, approved and paid; that the State Controller of the State of California has consented, in writing, [61] to a partial distribution of said estate; that all personal property taxes due and payable by said estate have been paid; that the distribution prayed for in said petition may be allowed as therein prayed for without injury to said estate or any person interested therein, and after said distribution sufficient assets will remain in the hands of the executors to pay all debts and expenses of administration;

It is Therefore Hereby Ordered, Adjudged and Decreed that said J. David Zellerbach and Harold L. Zellerbach, executors of the last will and testament of Isadore Zellerbach, deceased, pay and deliver to the persons hereinafter named their respective legacies under the last will and testament of decedent, which legacies are in the sum of Five Thousand Dollars (\$5,000) to each of said persons, and which legacies shall be paid by the delivery of sixty-one (61) shares of the preferred capital stock of Crown Zellerbach Corporation and the sum of Five and 62/100 dollars (\$5.62) in cash to each of the following persons: Jane Saroni Washburn, Louis Saroni, A. B. Saroni, Jr., James D. Zellerbach, Jr., Richard C. Zellerbach, William J. Zellerbach, Rolinde Zellerbach Loew and Stephen Anthony Zellerbach.

It is Hereby Further Ordered that the giving of any bond by any of the persons herein named before receiving their respective legacies be, and the

same is hereby dispensed with. Done in Open Court this 2nd day of September, 1942.

T. I. FITZPATRICK,

Judge of the Superior Court.

Consent to the foregoing partial distribution is hereby granted August 19, 1942.

HARRY B. RILEY,

State Controller.

By A. W. BROUILLET,

Deputy Inheritance Tax
Attorney.

[Endorsed]: Filed Sept. 2, 1942. [62]

EXHIBIT G.

In the Superior Court of the State of California in
and for the City and County of San Francisco.

Dept. 9. No. 87721

In the Matter of the Estate of
ISADORE ZELLERBACH,

Deceased.

PETITION FOR PARTIAL DISTRIBUTION
To the Honorable, the Superior Court of the State
of California, in and for the City and County
of San Francisco:

The petition of J. David Zellerbach and Harold L.
Zellerbach respectfully shows:

1. That your petitioners are the duly appointed, qualified and acting executors of the last will and testament of Isadore Zellerbach, deceased.

2. That said decedent died testate on August 7, 1941, and Letters Testamentary were issued to your petitioners and to Marcus M. Baruh, now deceased, on September 2, 1941; that more than four months have elapsed since the issuance of such Letters Testamentary.

3. That the total value of said estate, as shown by the inventory and appraisement on file, herein, is \$4,754,671.56; [63] that the time for filing claims against said estate has expired; that all claims which have been filed have been allowed, approved and paid; that the expenses of administration have not been paid as yet, but there will be sufficient assets with which to pay said expenses, even if the distribution herein prayed for and hereinafter described is allowed and paid.

4. That the federal estate tax, as disclosed by the return, has been paid; that the inheritance taxes due the State of California have not yet been determined; that the petitioners are informed and believe, and therefore allege that the State Controller will consent in writing to the partial distribution herein prayed for; that all personal property taxes due and payable by said estate have been paid.

5. That on September 2, 1942, an order and decree for partial distribution was made and entered herein under and by virtue of the terms of which all gifts and legacies under the terms of the last will and testament of decedent were ordered to be paid; that pursuant to the terms of said decree all of said legacies have been paid.

6. That under the provisions of said last will and testament of decedent it is provided as follows:

“I hereby give, devise and bequeath unto my dear wife, Jennie B. Zellerbach, an undivided three sixths of all of the rest, residue and remainder of my estate, real and personal of which I may die seized or possessed, and I hereby give, devise and bequeath the remaining undivided three-sixths of said rest, residue and remainder of my estate to my three children, J. David, Harold L. and Claire, one-sixth to each.”

7. That it is estimated that the income from the estate of said decedent for the calendar year 1942 will approximate the sum of \$317,000.00; that the residuary legatees and the executors desire to distribute a portion of said income as follows: [64]

(a) To Jennie B. Zellerbach, widow of decedent	\$ 22,000.00
(b) To J. David Zellerbach, son of decedent	53,000.00
(c) To Harold L. Zellerbach, son of decedent....	53,000.00
(d) To Claire Z. Saroni, daughter of decedent	53,000.00

Total.....	\$181,000.00
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8. That it is not proposed at this time to distribute any of the corpus of the residue of the estate, nor any income save and except that hereinabove described; that all of said income may be distributed without injury to the estate, or any person interested therein, and your petitioners request that the court dispense with the necessity of any of said legatees executing and filing a bond to your petitioners.

Wherefore, petitioners pray that the clerk of the above entitled court shall set this petition for hearing by the court; that notice of the time and place of such hearing shall be given in the manner and form required by law; that upon such hearing an order be made and entered herein distributing from the income of the estate of said decedent for the calendar year 1942, the sum of \$181,000.00 in cash, which income is to be distributed to the persons hereinabove named, in the amounts set opposite their respective names; that the court make an order dispensing with the execution and filing of a bond by any of said persons, and that this court make all necessary orders as may be meet and proper in the premises.

J. DAVID ZELLERBACH,
HAROLD L. ZELLERBACH,
Executors and Petitioners.

PHILIP S. EHRLICH,
Attorney for Executors and
Petitioners.

[Endorsed] Filed Nov. 25, 1942. [65]

EXHIBIT H

In the Superior Court of the State of California in
and for the City and County of San Francisco

Dept. 9. No. 87721

In the Matter of the Estate of
ISADORE ZELLERBACH,

Deceased.

ORDER AND DECREE FOR PARTIAL
DISTRIBUTION

J. David Zellerbach and Harold L. Zellerbach, executors of the last will and testament of Isadore Zellerbach, deceased, having filed herein on the 25th day of November, 1942, their petition praying for an order and decree of this court, authorizing them to distribute from the income of said estate for the calendar year 1942, the sum of \$181,000.00 to the persons hereinafter named in the amounts set opposite their respective names, and said petition coming on this day regularly to be heard, and proof having been made to the satisfaction of the court, the court finds that notice of the hearing of said petition has been regularly given for the period and in the manner and form required by law;

The Court, after hearing the evidence, finds that all the allegations of said petition are true; that the time for [66] filing claims against said estate has

expired; that all claims which have been filed have been allowed, approved and paid; that the federal estate tax, as shown by the return, has been paid; that the State Controller of the State of California has consented in writing to the said distribution; that all personal property taxes due and payable by said estate have been paid; that the distribution prayed for in said petition may be allowed as therein prayed for without injury to said estate or any person interested therein, and that after said distribution sufficient assets will remain in the hands of the executors to pay all debts and expenses of administration;

It is Therefore Hereby Ordered, Adjudged and Decreed that said J. David Zellerbach and Harold L. Zellerbach, as executors of the last will and testament of Isadore Zellerbach, deceased, pay and deliver to the persons hereinafter named from the income of said estate, for the calendar year 1942, the total sum of \$181,000.00 in the amounts set opposite their respective names, to-wit:

(a)	To Jennie B. Zellerbach, widow of decedent	\$ 22,000.00
(b)	To J. David Zellerbach, son of decedent.....	53,000.00
(c)	To Harold L. Zellerbach, son of decedent....	53,000.00
(d)	To Claire Z. Saroni, daughter of decedent..	53,000.00
		<hr/>
		\$181,000.00

It is Hereby Further Ordered that the giving of any bond by any of the persons herein named before receiving their respective distributions of income be, and the same is hereby dispensed with.

Done in Open Court this 7th day of December, 1942.

T. I. FITZPATRICK,

Judge of the Superior Court.

Consent to the [67] foregoing distribution is hereby granted.

Dated: November 28, 1942.

HARRY B. RILEY,

State Controller.

A. W. BROUILLET,

Deputy Inheritance Tax
Collector.

[Endorsed]: Filed Dec. 7, 1942.

EXHIBIT I

In the Superior Court of the State of California in
and for the City and County of San Francisco

Dept. 9. No. 87721

In the Matter of the Estate of
ISADORE ZELLERBACH,

Deceased.

PETITION FOR PARTIAL DISTRIBUTION

To the Honorable, the Superior Court of the State
of California, in and for the City and County
of San Francisco:

The petition of J. David Zellerbach and Harold
L. Zellerbach respectfully shows:

1. That your petitioners are the duly appointed,
qualified and acting executors of the Last Will and
Testament of Isadore Zellerbach, deceased.

2. That said decedent died testate on August 7, 1941, and Letters Testamentary were issued to your petitioners and to Marcus M. Baruh, now deceased, on September 2, 1941; that more than four months have elapsed since the issuance of such Letters Testamentary.

3. That the total value of said estate, as shown by the inventory and appraisement on file herein, is \$4,754,671.56; that the time for filing claims against said estate has expired; that all claims which have been filed have been allowed, approved and paid; that the expenses of administration have not been paid as yet, but there will be sufficient assets with which to pay said expenses, even if the distribution herein prayed for and hereinafter described is allowed and paid.

4. That the federal estate tax, as disclosed by the return, has been paid; that the inheritance taxes due the State of California have not yet been determined; that the petitioners are informed and believe, and therefore allege that the State Controller will consent in writing to the partial distribution herein prayed for; that all personal property taxes due and payable by said estate have been paid.

5. That on September 2, 1942 an order and decree for partial distribution was made and entered herein under and by virtue of the terms of which all gifts and legacies under the terms of the Last Will and Testament of decedent were ordered to be paid; that pursuant to the terms of said decree all of said legacies have been paid.

6. That under the provisions of said Last Will and Testament of decedent it is provided as follows:

“I hereby give, devise and bequeath unto my dear wife, Jennie B. Zellerbach, an undivided three-sixths of all of the rest, residue and remainder of my estate, real and personal, of which I may die seized or possessed, and I hereby give, devise and bequeath the remaining undivided three-sixths of said rest, residue and remainder of my estate to my three children, J. David, Harold L. and Claire, one-sixth to each.”

7. That it is proposed to distribute at this time to the residuary legatees of said Last Will and Testament from the corpus of said estate the following shares of capital stock, constituting a portion of the assets of said estate, to wit: [70]

6000 shares of preferred stock of Crown Zellerbach Corporation; 30,000 shares of common stock of Crown Zellerbach Corporation; 9000 shares of preferred stock of Rayonier Incorporated; 12,000 shares of common stock of Rayonier Incorporated.

That it is proposed to distribute said shares of stock as follows:

One-half thereof to Jennie B. Zellerbach
One-sixth thereof to J. David Zellerbach
One-sixth thereof to Harold L. Zellerbach
One-sixth thereof to Claire Z. Saroni

Wherefore, petitioners pray that the clerk of the above-entitled court shall set this petition for hear-

by the court; that notice of the time and place of such hearing shall be given in the manner and form required by law; that upon such hearing an order be made and entered herein distributing from the assets of said estate the property herein described to the persons herein named in the proportions herein designated; that the court make an order dispensing with the execution and filing of a bond by any of said persons and that this court make all necessary orders as may be meet and proper in the premises.

J. DAVID ZELLERBACH,
HAROLD L. ZELLERBACH,
Executors and Petitioners.

PHILIP S. EHRLICH,
Attorney of Executors
and Petitioners.

State of California,
City and County of San Francisco—ss:

J. David Zellerbach and Harold L. Zellerbach, being duly sworn, each for himself and not one for the other, depose and say:

That he is one of the executors and petitioners in the above entitled matter; that he has read the within and foregoing petition and knows the contents thereof; that the same is true of his own knowledge, except as to the matters therein stated

on information and belief, and that as to those matters he believes it to be true.

J. DAVID ZELLERBACH,
HAROLD L. ZELLERBACH.

Subscribed and sworn to before me this 25th day of November, 1942.

[Seal] NEIL T. DUFFY,
Notary Public, in and for the City and County of
San Francisco, State of California.

[Endorsed]: Filed Nov. 25, 1942.

EXHIBIT J

In the Superior Court of the State of California in
and for the City and County of San Francisco

Dept. 9. No. 87721

In the Matter of the Estate of
ISADORE ZELLERBACH,

Deceased.

ORDER AND DECREE FOR PARTIAL DISTRIBUTION

J. David Zellerbach and Harold L. Zellerbach, executors of the Last Will and Testament of Isadore Zellerbach, deceased, having filed herein on the 25th day of November, 1942, their petition praying for an order and decree of partial distribution of this court, authorizing them to distribute from the assets of said estate the stocks hereinafter described

to the persons hereinafter named, and said petition coming on this day regularly to be heard, and proof having been made to the satisfaction of the court, the court finds that notice of the hearing of said petition has been regularly given for the period and in the manner and form required by law;

The Court, after hearing the evidence, finds that all the allegations of said petition are true; that the time for filing claims against said estate has expired; that all claims which [73] have been filed have been allowed, approved and paid; that the federal estate tax, as shown by the return, has been paid; that the State Controller of the State of California has consented in writing to the said distribution; that all personal property taxes due and payable by said estate have been paid; that the distribution prayed for in said petition may be allowed as therein prayed for without injury to said estate or any person interested therein, and that after said distribution sufficient assets will remain in the hands of the executors to pay all debts and expenses of administration;

It is therefore ordered, adjudged and decreed that there be, and there is hereby distributed to the persons hereinafter named an aggregate of 6000 shares of the preferred capital stock of Crown Zellerbach Corporation; 30,000 shares of the common capital stock of Crown Zellerbach Corporation; 9000 shares of the preferred capital stock of Rayonier Incorporated, and 12,000 shares of the common capital stock of Rayonier Incorporated, which shares of

stock are distributed to said persons in the proportions set opposite their respective names, to wit:

One-half thereof to Jennie B. Zellerbach

One-sixth thereof to J. David Zellerbach

One-sixth thereof to Harold L. Zellerbach

One-sixth thereof to Claire Z. Saroni

It is hereby further ordered, adjudged and decreed that said J. David Zellerbach and Harold L. Zellerbach, the executors of the Last Will and Testament of Isadore Zellerbach, deceased, deliver to each of said persons certificates for the respective number of shares of said stock that each of said persons is entitled to receive.

It is hereby further ordered that the giving of any bond [74] by any of the persons herein named before receiving the respective distributions herein ordered be, and the same is hereby dispensed with.

Done in open Court this 8th day of December, 1942.

T. I. FITZPATRICK,

Judge of the Superior Court.

Consent to the foregoing partial distribution is hereby granted.

Dated November 28, 1942.

HARRY B. RILEY,

State Controller,

By A. W. BROUILLET,

Deputy Inheritance Tax
Collector.

[Endorsed]: Filed Dec. 8, 1942. [75]

EXHIBIT K

In the Superior Court of the State of California in
and for the City and County of San Francisco

Dept. 9. No. 87721

In the Matter of the Estate of
ISADORE ZELLERBACH,

Deceased.

PETITION FOR AUTHORITY TO BORROW
MONEY AND PLEDGE PERSONAL
PROPERTY

To the Honorable, the Superior Court of the State
of California, in and for the City and County of
San Francisco:

The petition of J. David Zellerbach and Harold
L. Zellerbach respectfully show:

That your petitioners are the duly appointed,
qualified and acting executors of the Last Will and
Testament of Isadore Zellebach, deceased; that the
inventory and appraisement of said estate has been
duly made and filed herein; that as appears from
said inventory and appraisement the appraised
value of said estate is the sum of \$4,754,671.56; that
the petitioners hereby ask leave of court to borrow
money and to execute a note or notes and pledge on
the personal property of said estate, hereinafter
described, and the particular purpose or purposes
for which it is proposed to make said note or notes
and said pledge agreement are as follows: [76]

That it is necessary for your petitioners to raise
cash for the payment of inheritance taxes, estate
taxes and expenses of administration; that the
amount which your petitioners propose to raise is

\$1,000,000.00, payable on or before one year after date, with interest at the rate of $2\frac{1}{2}\%$ per annum, which note or notes are to be secured by a pledge of any or all of the personal property described in the inventory and appraisement on file herein and not heretofore sold or distributed to the heirs of decedent; that said pledge will be in such form as is required by the person or persons or lending institutions lending your petitioners said sum of money, or any portion thereof.

Wherefore, petitioners pray that an order be made and entered herein authorizing them, as executors of the Estate of Isadore Zellerbach, deceased, to borrow a sum not to exceed \$1,000,000.00 payable on or before one year after date with interest at the rate of $2\frac{1}{2}\%$ per annum, and to make and execute a promissory note or notes therefor, and as security for said promissory note or notes to pledge all or any portion of the personal property described in the inventory and appraisement on file herein and not heretofore sold or disposed of or distributed to the heirs of decedent, and for such purpose to execute a pledge agreement in such form or forms as may be required by the person or persons or lending institutions lending your petitioners said sum of money or any portion thereof, and that all other and proper orders be made in the premises.

J. DAVID ZELLERBACH,
HAROLD L. ZELLERBACH,
Petitioners.

PHILIP S. EHRLICH,
Attorney for Petitioners.

State of California,
City and County of San Francisco—ss.

J. David Zellerbach and Harold L. Zellerbach,
being duly sworn each for himself, and not one for
the other, depose and say:

That he is one of the petitioners in the above-
entitled matter; that he has read the within and
foregoing petition and knows the contents thereof;
that the same is true of his own knowledge, except
as to the matters therein stated on information and
belief, and that as to those matters he believes it to
be true.

J. DAVID ZELLERBACH,
HAROLD L. ZELLERBACH.

Subscribed and sworn to before me this 26th day
of October, 1942.

[Seal] DOROTHY H. McLENNAN,
Notary Public in and for the City and County of
San Francisco, State of California.

[Endorsed]: Filed Oct. 26, 1942. [78]

EXHIBIT L

In the Superior Court of the State of California in
and for the City and County of San Francisco

Dept. 9. No. 87721

In the Matter of the Estate of
ISADORE ZELLERBACH,

Deceased.

ORDER AUTHORIZING EXECUTORS TO
BORROW MONEY, EXECUTE PROMIS-
SORY NOTES, AND PLEDGE PERSONAL
PROPERTY

J. David Zellerbach and Harold L. Zellerbach, executors of the Last Will and Testament of Isadore Zellerbach, deceased, having filed herein on the 26th day of October, 1942, their verified petition for authority to borrow the sum of not to exceed \$1,000,000.00, payable on or before one year after date, with interest at the rate of $2\frac{1}{2}\%$ per annum, and to execute a promissory note or notes therefor, and as security for said promissory note or notes to pledge all or any portion of the personal property of said estate described in the inventory and appraisement on file herein and not heretofore sold or disposed of or distributed to the heirs of said decedent, said petition came on regularly this day to be heard before the above-entitled court, Department No. 9 thereof, and proof having been made to the satisfaction of the court, the court finds that notice of the time and place of the hearing of said petition

has been given in the manner and form and for the time required by law; and after hearing the evidence, the court being satisfied that it is for the best interests and advantage of said estate that said petition be granted;

Now, therefore, it is hereby ordered that said J. David Zellerbach and Harold L. Zellerbach, as executors of the Last Will and Testament of Isadore Zellerbach, deceased, be and they are hereby authorized to borrow a sum not to exceed \$1,000,000.00 and to execute their promissory note or notes therefor, payable on or before one year after date, with interest at the rate of $2\frac{1}{2}\%$ per annum, and as security for said promissory note or notes said executors are authorized to pledge all or any portion of the personal property of said estate described in the inventory and appraisal on file herein and not heretofore sold or disposed of or distributed to the heirs of decedent, and to execute a pledge agreement therefor, said promissory note or notes and pledge agreement to be in such form or forms as may be required by the person or persons or lending institutions lending said money, or any portion thereof.

Done in Open Court this 6th day of November, 1942.

Judge of the Superior Court.

[Endorsed]: Filed Nov. 6, 1942. [80]

EXHIBIT M

In the Superior Court of the State of California in
and for the City and County of San Francisco

Dept. 9. No. 87721

In the Matter of the Estate of
ISADORE ZELLERBACH,

Deceased.

PETITION FOR PARTIAL DISTRIBUTION

To the Honorable, the Superior Court of the State
of California, in and for the City and County
of San Francisco:

The petition of J. David Zellerbach and Harold
L. Zellerbach respectfully shows:

1. That your petitioners are the duly appointed,
qualified and acting executors of the Last Will and
Testament of Isadore Zellerbach, deceased.

2. That said decedent died testate on August 7,
1941, and Letters Testamentary were issued to your
petitioners and to Marcus M. Baruh, now deceased,
on September 2, 1941; that more than four months
have elapsed since the issuance of such Letters
Testamentary.

3. That the total value of said estate, as shown
by the inventory and appraisement on file herein, is
\$4,754,671.56; that the time for filing claims against
said estate has expired; [81] that all claims which
have been filed have been allowed, approved and
paid; that the expenses of administration have not
been paid as yet, but there will be sufficient assets

with which to pay said expenses, even if the distribution herein prayed for and hereinafter described is allowed and paid.

4. That the federal estate tax, as disclosed by the return, has been paid; that the inheritance taxes due the State of California have not yet been determined; that the petitioners are informed and believe, and therefore allege that the State Controller will consent in writing to the partial distribution herein prayed for; that all personal property taxes due and payable by said estate have been paid.

5. That on September 2, 1942 an order and decree for partial distribution was made and entered herein under and by virtue of the terms of which all gifts and legacies under the terms of the Last Will and Testament of decedent were ordered to be paid; that pursuant to the terms of said decree all of said legacies have been paid.

6. That under the provisions of said Last Will and Testament of decedent it is provided as follows:

“I hereby give, devise and bequeath unto my dear wife, Jennie B. Zellerbach, an undivided three-sixths of all of the rest, residue and remainder of my estate, real and personal, of which I may die seized or possessed, and I hereby give, devise and bequeath the remaining undivided three-sixths of said rest, residue and remainder of my estate to my three children, J. David, Harold L. and Claire, one-sixth to each.”

7. That included among the assets of said estate is a certain parcel of unimproved real property hereinafter described; that it is proposed to distribute the said parcel of real property at this time to the residuary legatees of said Last Will and Testament in the following proportions:

- (a) Three-sixths to Jennie B. Zellerbach
- (b) One-sixth to J. David Zellerbach
- (c) One-sixth to Harold L. Zellerbach
- (d) One-sixth to Claire Z. Saroni

That the following is a description of the real property proposed to be distributed by this petition:

All that real property situate, lying and being in the City and County of San Francisco, State of California, more particularly described as follows:

“Commencing at a point on the northerly line of Turk Street 137 feet 6 inches West of the Westerly line of Leavenworth Street, running thence westerly along the northerly line of Turk Street 137 feet 6 inches; thence at a right angle northerly 137 feet 6 inches; thence at a right angle easterly 137 feet 6 inches; thence at a right angle southerly 137 feet 6 inches to the northerly line of Turk Street and the point of commencement.”

Wherefore, petitioners pray that the clerk of the above-entitled court shall set this petition for hearing by the court; that notice of the time and place of such hearing shall be given in the manner and form required by law; that upon such hearing an order be made and entered herein distributing from the assets of said estate the real property herein de-

scribed to the persons herein named in the proportions above designated; that the court make an order dispensing with the execution and filing of a bond by any of said persons and that this court make all necessary orders as may be meet and proper in the premises.

J. DAVID ZELLERBACH,
HAROLD L. ZELLERBACH,
Executors and Petitioners.
PHILIP S. EHRLICH,
Attorney of Executors
and Petitioners.

State of California,
City and County of San Francisco—ss.

J. David Zellerbach and Harold L. Zellerbach, being duly sworn each for himself and not one for the other, depose and say:

That he is one of the executors and petitioners in the above-entitled matter; that he has read the within and foregoing petition and knows the contents thereof; that the same is true of his own knowledge except as to the matters therein stated on information and belief, and as to those matters he believes it to be true.

J. DAVID ZELLERBACH,
HAROLD L. ZELLERBACH.

Subscribed and sworn to before me this 18th day of June, 1943.

[Seal] DOROTHY H. McLENNAN,
Notary Public in and for the City and County of
San Francisco, State of California.

[Endorsed]: Filed June 18, 1943. [84]

EXHIBIT N

In the Superior Court of the State of California in
and for the City and County of San Francisco

Dept. 9. No. 87721

In the Matter of the Estate of
ISADORE ZELLERBACH,

Deceased.

**ORDER AND DECREE FOR PARTIAL
DISTRIBUTION**

J. David Zellerbach and Harold L. Zellerbach, executors of the Last Will and Testament of Isadore Zellerbach, deceased, having filed herein their petition praying for an order and decree of this court, on the 7th day of July, 1943, authorizing them to distribute the real property set forth in said petition, and hereinafter described, to the residuary legatees under the Last Will and Testament of Isadore Zellerbach, deceased, in the proportions that the residue of said estate is distributed to said residuary legatees; and said petition coming on regularly this day to be heard, and proof having been made to the satisfaction of this court, the court finds that notice of the hearing of said petition has been regularly given for the period and in the manner and form required by law;

The court after hearing the evidence finds that all [85] the allegations of said petition are true; that the time for filing claims against said estate has expired; that all claims which have been filed

have been allowed, approved and paid; that the federal estate tax, as shown by the return, has been paid; that the State Controller of the State of California has consented in writing to said distribution; that all personal property taxes due and payable by said estate have been paid; that the distribution prayed for in said petition may be allowed, as therein prayed for without injury to said estate or any person interested therein, and that after said distribution sufficient assets will remain in the hands of the executors to pay all debts and expenses of administration;

It is therefore hereby ordered, adjudged and decreed that all of that certain real property hereinafter described, being a part of the residue and remainder of the Estate of Isadore Zellerbach, deceased, be, and the same is hereby distributed as follows:

- (a) Three-sixths to Jennie B. Zellerbach
- (b) One-sixth to J. David Zellerbach
- (c) One-sixth to Harold L. Zellerbach
- (d) One-sixth to Claire Z. Saroni

The following is a particular description of the real property of which distribution is hereby ordered:

All that certain real property situate, lying and being in the City and County of San Francisco, State of California, more particularly described as follows:

“Commencing at a point on the northerly line of Turk Street 137 feet 6 inches west of the

westerly line of Leavenworth Street, running thence westerly along the northerly line of Turk Street 137 feet 6 inches; thence at a right angle easterly 137 feet 6 inches; thence at a right angle southerly 137 feet 6 inches to the northerly line of Turk Street and the point of commencing.”

Done in Open Court this 7th day of July, 1943.

/s/ T. I. FITZPATRICK , ,

Judge of the Superior Court.

Consent to the foregoing partial distribution is hereby granted.

Dated June 22nd, 1943.

HARRY B. RILEY,

State Controller.

By A. W. BROUILLETT,

Deputy Inheritance Tax

Attorney.

[Endorsed]: Filed July 7, 1943. [87]

EXHIBIT O

In the Superior Court of the State of California in
and for the City and County of San Francisco

Dept. 9. No. 87721

In the Matter of the Estate of
ISADORE ZELLERBACH,

Deceased.

PETITION FOR PARTIAL DISTRIBUTION

To the Honorable, the Superior Court of the State
of California, in and for the City and County
of San Francisco:

The petition of J. David Zellerbach and Harold
L. Zellerbach respectfully shows:

1. That your petitioners are the duly appointed,
qualified and acting executors of the Last Will and
Testament of Isadore Zellerbach, deceased.

2. That said decedent died testate on August 7,
1941, and Letters Testamentary were issued to your
petitioners and to Marcus M. Baruh, now deceased,
on September 2, 1941; that more than four months
have elapsed since the issuance of such Letters
Testamentary.

3. That the total value of said estate, as shown
by the inventory and appraisal on file herein, is
\$4,754,671.56; that the time for filing claims against
said estate has expired; that all claims which have
been filed have been allowed, approved and paid;
that the expenses of administration have not been
paid as yet, but there will be sufficient assets with

which to pay said expenses, even if the distribution herein prayed for and hereinafter described is allowed and paid.

4. That the federal estate tax, as disclosed by the return, has been paid; that the inheritance taxes due the State of California have not yet been determined; that the petitioners are informed and believe, and therefore allege that the State Controller will consent in writing to the partial distribution herein prayed for; that all personal property taxes due and payable by said estate have been paid.

5. That on September 2, 1942 an order and decree for partial distribution was made and entered herein under and by virtue of the terms of which all gifts and legacies under the terms of the Last Will and Testament of decedent were ordered to be paid; that pursuant to the terms of said decree all of said legacies have been paid.

6. That under the provisions of said Last Will and Testament of decedent it is provided as follows:

“I hereby give, devise and bequeath unto my dear wife, Jennie B. Zellerbach, an undivided three-sixths of all of the rest, residue and remainder of my estate, real and personal, of which I may die seized or possessed, and I hereby give, devise and bequeath the remaining undivided three-sixths of said rest, residue and remainder of my estate to my three children, J. David, Harold L. and Claire, one-sixth to each.”

7. That included among the assets of said estate are six hundred and twenty-seven (627) shares of

the common capital stock of Dreamland Auditorium, Ltd. and four hundred and sixty (460) shares of the preferred capital stock of Dreamland Auditorium, Ltd.; that it is proposed to distribute said shares of stock at this time to the residuary legatees of the said Last Will and Testament in [89] the following proportions:

- (a) Three-sixths to Jennie B. Zellerbach
- (b) One-sixth to J. David Zellerbach
- (c) One-sixth to Harold L. Zellerbach
- (d) One-sixth to Claire Z. Saroni

Wherefore, petitioners pray that the clerk of the above-entitled court shall set this petition for hearing by the court; that notice of the time and place of such hearing shall be given in the manner and form required by law; that upon such hearing an order be made and entered herein distributing from the assets of said estate the property hereinabove described to the persons herein named in the proportions above designated; that the court make an order dispensing with the execution and filing of a bond by any of said persons and that this court make all necessary orders as may be meet and proper in the premises.

/s/ J. DAVID ZELLERBACH,
/s/ HAROLD L. ZELLERBACH,
Executors and Petitioners.

/s/ PHILIP S. EHRLICH,
Attorney for Executors and
Petitioners. [90]

State of California,

City and County of San Francisco—ss.

J. David Zellerbach, being first duly sworn, deposes and says:

That he is one of the executors of the Last Will and Testament of Isadore Zellerbach, deceased; and make this verification for and in behalf of the executors of said Last Will and Testament; that he has read the within and foregoing petition and knows the contents thereof; that the same is true of his own knowledge, except as to those matters therein stated on information and belief, and as to it he believes them to be true.

/s/ J. DAVID ZELLERBACH.

Subscribed and sworn to before me this 4th day of August, 1943.

[Seal] DOROTHY H. McLENNAN,
Notary Public in and for the City and County of
San Francisco, State of California.

[Endorsed]: Filed Aug. 4, 1943. [91]

EXHIBIT P

In the Superior Court of the State of California in
and for the City and County of San Francisco

Dept. 9. No. 87721

In the Matter of the Estate of

ISADORE ZELLERBACH,

Deceased.

ORDER AND DECREE OF PARTIAL
DISTRIBUTION

J. David Zellerbach and Harold L. Zellerbach, executors of the Last Will and Testament of Isadore Zellerbach, deceased, having filed herein on the 4th day of August, 1943, their petition praying for an order and decree of this Court authorizing them to distribute the personal property hereinafter described to the residuary legatees under the Last Will and Testament of Isadore Zellerbach, deceased, in the proportions that the residue of said estate is distributed to said residuary legatees; and said petition coming on regularly this day to be heard, and proof having been made to the satisfaction of the Court, the Court finds that the notice of the hearing of said petition has been regularly given for the period and in the manner and form required by law;

The Court after hearing the evidence finds that all the allegations of said petition are true; that the time for filing claims against said estate has expired;

that all claims which have [92] been filed have been allowed, approved and paid; that the Federal Estate tax, as shown by the return, has been paid; that the State Controller of the State of California has consented in writing to said distribution; that all personal property taxes due and payable by said estate have been paid; that the distribution prayed for in said petition may be allowed as therein prayed for without injury to said estate or any person interested therein, and that after said distribution sufficient assets will remain in the hands of the executors to pay all debts and expenses of administration;

It is therefore hereby ordered, adjudged and decreed that the personal property hereinafter described being a part of the residue and remainder of the estate of Isadore Zellerbach, deceased be, and the same is hereby distributed as follows:

- (a) Three-sixths to Jennie B. Zellerbach
- (b) One-sixth to J. David Zellerbach
- (c) One-sixth to Harold L. Zellerbach
- (d) One-sixth to Claire Z. Saroni

The following is a particular description of the personal property of which distribution is hereby ordered:

- (a) 627 shares of the common capital stock of Dreamland Auditorium, Ltd.
- (b) 460 shares of the preferred capital stock of Dreamland Auditorium, Ltd.

Done in Open Court this 18th day of August,
1943.

FRANKLIN A. GRIFFIN,
Judge of the Superior Court.

Consent to the foregoing partial distribution is
hereby granted.

Dated August 9th, 1943.

HARRY B. RILEY,
State Controller.
By A. W. BROUILLET,
Deputy Inheritance
Tax Attorney.

[Endorsed]: Filed Aug. 18, 1943. [93]

EXHIBIT Q

In the Superior Court of the State of California in
and for the City and County of San Francisco

Dept. 9. No. 87721

In the Matter of the Estate of
ISADORE ZELLERBACH,

Deceased.

PETITION FOR PARTIAL DISTRIBUTION

To the Honorable, the Superior Court of the State
of California, in and for the City and County
of San Francisco:

The petition of J. David Zellerbach and Harold
L. Zellerbach respectfully shows:

1. That your petitioners are the duly appointed,
qualified and acting executors of the Last Will and
Testament of Isadore Zellerbach, deceased.

2. That said decedent died testate on August 7, 1941, and Letters Testamentary were issued to your petitioners and to Marcus M. Baruh, now deceased, on September 2, 1941; that more than four months have elapsed since the issuance of such Letters Testamentary.

3. That the total value of said estate, as shown by the inventory and appraisement on file herein, is \$4,754,671.56; that the time for filing claims against said estate has expired; that all claims which have been filed have been allowed, approved and paid; that the expenses of administration have not been paid as yet, but there will be sufficient assets with which to pay said expenses, even if the distribution herein prayed for and hereinafter described is allowed and paid.

4. That the federal estate tax, as disclosed by the return has been paid; that all inheritance taxes due the state of California have been paid; that all personal property taxes due and payable by said estate have been paid.

5. That on September 2, 1942 an order and decree for partial distribution was made and entered herein under and by virtue of the terms of which all gifts and legacies under the terms of the Last Will and Testament of decedent were ordered to be paid; that pursuant to the terms of said decree all of said legacies have been paid.

6. That under the provisions of said Last Will and Testament of decedent it is provided as follows:

“I hereby give, devise and bequeath unto my dear wife, Jennie B. Zellerbach, an undivided

three-sixths of all of the rest, residue and remainder of my estate, real and personal, of which I may die seized or possessed, and I hereby give, devise and bequeath the remaining undivided three-sixths of said rest, residue and remainder of my estate to my three children, J. David, Harold L. and Claire, one-sixth to each.”

7. That it is estimated that the income from the estate of said decedent for the calendar year 1943 will approximate the sum of \$191,500.00; that the residuary legatees and the executors desire to distribute a portion of said income, to-wit, the sum of \$96,000.00 as follows:

(a)	To J. David Zellerbach, son of decedent.....	\$ 32,000.00
(b)	To Harold L. Zellerbach, son of decedent....	32,000.00
(c)	To Claire Z. Saroni, daughter of decedent..	32,000.00
Total		<hr/> \$ 96,000.00

8. That it is not proposed at this time to distribute any of the corpus of the residue of the estate, nor any income, save and except that hereinabove described; that all of said income may be distributed without injury to the estate, or any person interested therein, and your petitioners request that the court dispense with the necessity of any of said legatees executing and filing a bond to your petitioners.

Wherefore, petitioners pray that the clerk of the above-entitled court shall set this petition for hearing by the court; that notice of the time and place of such hearing shall be given in the manner and form

required by law; that upon such hearing an order be made and entered herein distributing from the income of the estate of said decedent for the calendar year 1943, the sum of \$96,000.00 in cash, which income is to be distributed to the persons hereinabove named, in the amounts set opposite their respective names; that the court make an order dispensing with the execution and filing of a bond by any of said persons, and that this court make all necessary orders as may be meet and proper in the premises.

J. DAVID ZELLERBACH,
HAROLD L. ZELLERBACH,
Executors and Petitioners.

PHILIP S. EHRLICH,
Attorney for Executors
and Petitioners.

State of California,
City and County of San Francisco—ss.

J. David Zellerbach and Harold L. Zellerbach, being duly sworn each for himself and not one for the other, depose and say:

That he is one of the executors and petitioners in the above-entitled matter; that he has read the within and foregoing petition and knows the contents thereof; that the same is true of his own knowledge except as to the matters therein stated on information and belief, and as to those matters he believes it to be true.

J. DAVID ZELLERBACH,
HAROLD L. ZELLERBACH.

Subscribed and sworn to before me this 30th day of November, 1943.

THOMAS A. DOUGHERTY,
Notary Public in and for the City and County of
San Francisco, State of California.

[Endorsed]: Filed Nov. 30, 1943. [97]

EXHIBIT R

In the Superior Court of the State of California in
and for the City and County of San Francisco

Dept. 9. No. 87721

In the Matter of the Estate of
ISADORE ZELLERBACH,

Deceased.

ORDER AND DECREE FOR PARTIAL DISTRIBUTION

J. David Zellerbach and Harold L. Zellerbach, executors of the Last Will and Testament of Isadore Zellerbach, deceased, having filed herein on the 30th day of November, 1943, their petition and praying for an order and decree of this court, authorizing them to distribute from the income of said estate, for the calendar year 1943, the sum of \$96,000.00 to the persons hereinafter named in the amounts set opposite their respective names, and said petition coming on this day regularly to be heard, and proof having been made to the satisfaction of the court, the court finds that notice of the

hearing of said petition has been regularly given for the period and in the manner and form required by law;

The Court, after hearing the evidence, finds that all the allegations of said petition are true; that the time for filing claims against said estate has expired; that all claims which [98] have been filed have been allowed, approved and paid; that the federal estate tax, as shown by the return, has been paid; that all inheritance taxes due the State of California have been paid; that all personal property taxes due and payable by said estate have been paid; that that the distribution prayed for in said petition may be allowed as therein prayed for without injury to said estate or any person interested therein, and that after said distribution sufficient assets will remain in the hands of the executors to pay all debts and expenses of administration.

It is therefore hereby ordered, adjudged and decreed that said J. David Zellerbach and Harold L. Zellerbach, as executors of the Last Will and Testament of Isadore Zellerbach, deceased, pay and deliver to the persons hereinafter named from the income of said estate, for the calendar year 1943, the total sum of \$96,000.00 in the amounts set opposite their respective names, to-wit:

(a)	To J. David Zellerbach, son of decedent.....	\$ 32,000.00
(b)	To Harold L. Zellerbach, son of decedent....	32,000.00
(c)	To Claire Z. Saroni, daughter of decedent..	32,000.00

\$ 96,000.00

It is hereby further ordered that the giving of any bond by any of the persons herein named before receiving their respective distributions of income be, and the same is hereby dispensed with.

Done in Open Court this 13th day of December, 1943.

T. I. FITZPATRICK,
Judge of the Superior Court.

[Endorsed]: Filed Dec. 13, 1943. [99]

EXHIBIT S

ESTATE OF ISADORE ZELLERBACH

Pro Forma Balance Sheet at December 31, 1942

After giving affect to unrealized appreciation of securities and liabilities unrecorded at that date but subsequently paid.

ASSETS

Cash	\$ 214,324.17
Stocks—At Market Value.....	3,077,943.20
Bonds—do	14,160.00
Notes and Accounts Receivable....	62,760.45
Real Estate—At Cost.....	54,424.35
Miscellaneous Assets.....	1,480.00
	<hr/>
Total Assets.....	\$ 3,425,092.17
	<hr/> <hr/>

LIABILITIES AND CORPUS

Income Taxes Payable.....	\$ 113,089.19
Notes Payable to Bank—Secured	500,000.00
Notes and Claims Payable to Jennie Zellerbach.....	318,669.31
Mortgage Payable.....	6,500.00
Unrecorded Liabilities— Per Exhibit D.....	552,306.99
<hr/>	
Total Liabilities	\$ 1,490,565.49
Estate Corpus and Undistributed Income	1,934,526.68
Balance Per Books— Exhibit B.....	\$ 2,252,973.47
Unrealized Appreciation— Stocks	230,715.20
Unrealized Appreciation— Bonds	3,145.00
<hr/>	
Total	\$ 2,486,833.67
Less unrecorded liabilities....	552,306.99
<hr/>	
Total Liabilities and Corpus.....	\$ 3,425,092.17
<hr/> <hr/>	

ESTATE OF ISADORE ZEILERBACH

Balance Sheet at December 31, 1942

ASSETS

Cash in Banks and at Brokers....	\$ 214,324.17
Stocks—At Cost.....	2,847,228.00
(Estimated market value \$3,077,943.20)	
Bonds—At Cost.....	11,015.00
(Estimated market value \$14,160.00)	
Notes and Accounts Receivable..	62,760.45
<hr/>	
Total Current Assets....	\$ 3,135,327.62
Real Estate.....	54,424.35
Miscellaneous Assets.....	1,480.00
<hr/>	
	\$ 3,191,231.97
<hr/> <hr/>	

LIABILITIES AND CORPUS

Income Taxes Payable.....	\$ 113,089.19
Federal Tax on 1942 Income \$ 97,606.07	
California Tax on 1942 in-	
come	15,483.12
<hr/>	
Note Payable — Wells Fargo	
Bank & Union Trust Co.....	500,000.00
(Due Nov. 6, 1943—secured	
by 9,000 shares Crown	
Zellerbach Corp., \$5.00	
preferred.)	
Claim Payable—Jennie B. Zel-	
lerbach	118,669.31
<hr/>	
Total Current Liabilities	\$ 731,758.50
Note Payable—Jennie B. Zeller-	
bach (Due May 6, 1945).....	200,000.00
Mortgage Payable—Niantic	
Building	6,500.00
<hr/>	
Total Liabilities.....	\$ 938,258.50
Estate Corpus at August 7,	
1941—Assets at Ap-	
praised Values Less Lia-	
bilities—Per Exhibit B....	\$ 3,335,942.29
Undistributed Income for	
the Period From August	
7, 1941, to December 31,	
1941	46,632.64
Undistributed Income for	
the Year Ended Decem-	
ber 31, 1942.....	49,550.38
<hr/>	
Total	\$ 3,432,125.31
Deduct	1,179,151.84
Distribution to Legatees.....	\$ 1,104,000.00
Specific Bequests Paid.....	40,000.00
Administrative Expenses	
Paid	34,551.84

Miscellaneous Assets	
Distributed	600.00
Miscellaneous Assets Dis-	
tributed	600.00
	<hr/>
	\$ 3,191,231.97
	<hr/>

ESTATE OF ISADORE ZELLERBACH

Estate Corpus at August 7, 1941

ASSETS

Cash in BaBnks.....		\$ 210,318.53
Total Balances.....	\$ 388,446.46	
Less Property of Jennie B.		
Zellerbach	178,127.93	
	<hr/>	
Stocks—Appraised Value.....		4,155,421.88
Bonds—Appraised Value.....		121,280.00
Notes and Loans — Appraised		
Value		60,795.17
Miscellaneous Assets.....		169,161.67
Yacht—Janidore	\$ 157,500.00	
Others	11,661.67	
Real Estate.....		55,500.00
Accounts Receivable.....		10,178.87
Accrued Interest.....	\$ 7,093.45	
Accrued Salaries.....	1,962.50	
Accrued Dividends.....	372.25	
Accrued Rents.....	750.67	
	<hr/>	
Total Assets.....		\$ 4,782,656.12
Less Liabilities.....		1,446,713.83
Federal Estate Tax.....	\$ 1,036,768.62	
Claim of Jennie B. Zeller-		
bach	118,669.31	
Debts of Decedent.....	291,275.90	
	<hr/>	
Estate Corpus at August 7,		
1941—To Exhibit A.....		\$ 3,335,942.29
		<hr/>

ESTATE OF ISADORE ZELLERBACH

Liabilities Not Recorded at December 31, 1942

California Inheritance Taxes.....	\$ 287,488.53
Assets Claimed by Jennie Zellerbach.....	16,000.00
Canadian Death Duties.....	796.94
Additional Assessment—California Tax—1940.....	503.84
Additional Assessment—California Tax—1941.....	766.81
Additional Assessment—California Tax—1941.....	197.51
Additional Assessment—California Tax—1940.....	167.57
Additional Assessment—Federal Tax—1940.....	815.49
Additional Assessment—Federal Estate Tax.....	167,736.30
Additional Assessment—Federal Estate Tax.....	* 41,450.67
Additional Assessment—Federal Tax—1941.....	421.16
Additional Assessment—California Tax—1941.....	85.45
Attorney's fees	35,876.72

Total unrecorded liabilities at December 31, 1942..\$ 552,306.99

*Determined in November, 1946; does not include interest.

EXHIBIT T

ESTATE OF ISADORE ZELLERBACH

Pro Forma Balance Sheet at December 31, 1943

After giving effect to unrealized appreciation of securities and liabilities unrecorded at that date but subsequently paid.

ASSETS

Cash	\$ 42,190.56
Stocks—At Market Value.....	3,741,673.90
Bonds—At Market Value.....	7,500.00
Notes and Accounts Receivable..	52,238.51
Claim for Refund of 1942 In- come Tax.....	71,585.08
Real Estate.....	26,071.84
Miscellaneous Assets.....	1,480.00
Total Assets.....	\$ 3,942,739.89

LIABILITIES AND CORPUS

Income Taxes Payable.....	\$ 7,422.68
Note Payable to Bank—Secured	525,000.00
Notes and Claims Payable to Jennie Zellerbach.....	318,669.31
Mortgage Payable.....	6,000.00
Miscellaneous Liabilities.....	277.03
Unrecorded Liabilities.....	247,517.68
<hr/>	
Total Liabilities.....	\$ 1,104,886.70
Estate Corpus and Undistributed Income	2,837,853.19
Balance Per Books—	
Exhibit B.....	\$ 2,148,697.37
Unrealized Appreciation—	
Stocks	936,673.50
<hr/>	
Total	\$ 3,085,370.87
Less Unrecorded Liabilities	247,517.68
<hr/>	
Total Liabilities and Corpus	\$ 3,942,739.89
<hr/> <hr/>	

ESTATE OF ISADORE ZELLERBACH

Balance Sheet at December 31, 1943

ASSETS

Cash in Bank.....	\$ 42,190.56
Stocks—At Cost.....	2,805,000.40
(Estimated Market Value, \$3,741,673.90)	
Bonds—\$10,000.00 U. S. Series E—At Cost.....	7,500.00
Notes and Accounts Receivable..	52,238.51
Claim for Refund of 1942 Income Tax.....	71,585.08
<hr/>	
Total Current Assets....	\$ 2,978,514.55
Real Estate.....	26,071.84
Miscellaneous Assets.....	1,480.00
<hr/>	
	\$ 3,006,066.39
<hr/> <hr/>	

LIABILITIES AND CORPUS

Income Taxes Payable.....	\$ 7,422.68
Federal Tax on 1943 Income	\$6,712.28
California Tax on 1943 In-	
come	710.40
Notes Payable: Wells Fargo Bank	
& Union Trust Co.....	525,000.00
(Secured by 9,000 shares	
Crown Zellerbach Corp.,	
\$5.00 Preferred.)	
Claim Payable — Jennie Zeller-	
bach	118,669.31
Miscellaneous Liabilities.....	277.03
	<hr/>
Total Current Liabili-	
ties	\$ 651,369.02
Note Payable — Jennie Zeller-	
bach (Due May 6, 1945).....	200,000.00
Mortgage Payable — Niantic	
Building	6,000.00
	<hr/>
Total Liabilities	\$ 857,369.02
Estate Corpus — Per Exhibit C	2,148,697.37
	<hr/>
	\$ 3,006,006.39
	<hr/> <hr/>

ESTATE OF ISADORE ZELLERBACH
ANALYSIS OF ESTATE CORPUS

For the Year Ended December 31, 1943

Balance — January 1, 1943.....		\$ 2,252,973.47
Add		230,509.20
Undistributed Income for the Year	\$ 134,523.65	
Adjustment of Liability of Taxes on 1943 Income as Claimed	95,986.25	
Total		\$ 2,483,483.37
Deduct		334,786.00
California Inheritance Taxes..\$	287,488.53	
Partial Distribution of Assets	29,800.00	
Assets Claimed by Jennie Zel- lerbach	16,000.00	
Canadian Death Duties.....	796.94	
Additional California Tax on 1940 Income.....	503.84	
Miscellaneous Expenses	196.69	
Estate Corpus at December 31, 1943 — To Exhibit B.....		\$ 2,148,697.37

The Tax Court of the United States

Docket No. 9786

ESTATE OF ISADORE ZELLERBACH, De-
ceased; J. DAVID ZELLERBACH and HAR-
OLD L. ZELLERBACH, Executors,
Petitioner.

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

San Francisco, California, December 6, 1946—2 p.m.
(Met pursuant to notice.)

Before: Honorable Ernest H. Van Fossan, Judge.

Appearances:

Albert A. Axelrod, Esq., and Philip S. Ehrlich,
Esq., 2002 Russ Building, San Francisco, Califor-
nia, appearing for Petitioners.

Edward J. Tonjes, Esq., (Honorable J. P. Wen-
chel, Chief Counsel, Bureau of Internal Revenue),
appearing for the Respondent. [109]

PROCEEDINGS

The Clerk: We have Docket 9786, Estate of Isa-
dore Zellerbach, Deceased; J. David Zellerbach and
Harold L. Zellerbach, Executors.

State your appearances, gentlemen, for the rec-
ord.

Mr. Axelrod: For the Petitioner, it is Philip S.
Ehrlich and Albert A. Axelrod. I am Axelrod.

Mr. Tonjes: Edward J. Tonjes for the Respondent.

The Court: Which one are you, please, sir?

Mr. Axelrod: Axelrod.

The Court: Will you state the issues?

Opening Statement on Behalf of the Petitioner
By Mr. Axelrod

Mr. Axelrod: May it please the Court, the Petitioner in this matter is the Estate of Isadore Zellerbach, Deceased. The taxes in controversy are income taxes for the calendar years 1942 and 1943. The decedent under his last Will and Testament made certain specific legacies and directed that the residue of his estate be distributed one-half to his widow, Jennie B. Zellerbach, and one-sixth to each of his children, to-wit, J. David Zellerbach, Harold L. Zellerbach and Claire Z. Saroni.

On September 2, 1942, the Probate Court made an order authorizing the Executors to make a partial distribution, which partial distribution directed the payment of all the [110] specific legacies under the Will. During the calendar year 1942 the total income of the estate for the year 1942 before any allowances for income distributed to beneficiaries for that year, was the sum of \$324,209.38, which was composed of ordinary income in the amount of \$316,595.74 and capital gains in the amount of \$7,613.64. These figures become important in the issues.

During the calendar year 1943 the total income of the estate for the year 1943 before any allowances for income distributed to beneficiaries for such

year, was the sum of \$206,864.94, which was composed of ordinary income in the amount of \$188,328.30 and capital gains in the amount of \$18,536.64.

Now, on November 25, 1942, the Executors filed two petitions for partial distribution with the Probate Court. In one petition they asked to distribute from the income of the estate the sum of \$181,000.00 to the residuary legatees, which amount they asked to be distributed as follows: To Jennie B. Zellerbach, widow, \$22,000, and to each of the children the sum of \$53,000. An order authorizing such distribution was made by the Probate Court on December 7, 1942, a copy of which is attached to the Stipulation of Facts as Exhibit H, which stipulation will be presented to the Court. On December 8, 1942, the Probate Court made another order for partial distribution—that is, the very next day—which [111] was based on the other petition which was filed on November 25, 1942, authorizing the Executors to distribute to the residuary legatees from the corpus of the estate in the proportions which they took under the will property which on said date had a fair market value of \$1,146,000. A copy of this order is likewise attached to the Stipulation of Facts and is marked Exhibit J therein.

The estate first claimed a credit in its income tax return for the year 1942 of the actual amount distributed by the order of December 7, 1942, to-wit, \$181,000, and each of the beneficiaries reported income in this amount. Subsequently the estate filed an amended return for the year 1942, in which it

claimed credit for the full amount of the income for the year 1942, to-wit, the sum of \$324,209.38, and Mrs. Jenne Zellerbach likewise filed an amended return wherein she included as income distributed to her one-half of the entire income of the estate of Isadore Zellerbach, deceased, for the year 1942, to-wit, the sum of \$157,661.87.

On November 30, 1943, the Executors filed a petition with the Probate Court for partial distribution, asking permission to distribute from the income of the estate for the year 1943 the sum of \$96,000.00, which sum was to be distributed one-third to each of the children of the decedent and no portion of the income was asked to be distributed to Jennie B. Zellerbach, the widow. [112]

On December 13, 1943, the court made an order for partial distribution authorizing the distribution of the amount of \$96,000.00, copy of which order is attached to the Stipulation of Facts as Exhibit R. Jennie B. Zellerbach reported in her income tax return for the year 1943 the fact that there had been distributed to her from the Estate of Isadore Zellerbach for the year 1943 the sum of \$92,664.15. The children reported the amount that was actually distributed to them.

Under the provisions of Section 162 of the Internal Revenue Code and Income Tax Regulation 111, Sec. 29.162-2, the estate claims as a credit against income tax for the year 1942 the full amount of its distributable income for said year, to-wit, the sum of \$324,209.38, and for the year 1943 the full amount of its distributable income for said

year, to-wit, the sum of \$206,864.94. The Commissioner has only allowed as a deduction the amount which was covered by the court's order, and has refused to allow the other amounts as a deduction.

It is the Petitioner's contention, based upon the record in this case, that this is a situation which is directly covered by Section 162 of the Internal Revenue Code and said Regulation 29.162-2, in that, as the record shows by the stipulation which will be offered here, that on December 31, 1942 the estate had assets of \$3,425,092.17; it [113] had liabilities of \$1,490,565.49, or it had an excess of assets over liabilities of \$1,934,526.68; that with respect to some of the liabilities, that these were secured; that the estate could have been distributed in December, 1942, which is evidenced by the fact that on December 8, 1942, corpus in excess of \$1,000,000 was distributed to the residuary legatess. Furthermore, since the amount of the corpus which was distributed in 1942 was in excess of the income, that under Section 162 of the Internal Revenue Code, to the extent to which the corpus exceeded the distributable income, that it will be deemed, first, a distribution of income, and the balance as a distribution of corpus.

With respect to the year 1943, the record shows a somewhat similar situation. On December 31, 1943, the assets of the estate were \$3,942,739.89; the liabilities were \$1,104,886.70, and the excess of the assets over the liabilities was \$2,837,853.19.

In view of these facts, all of which are covered by the Stipulation of Facts, and the additional

evidence which we will produce, we believe the Commissioner erred in not allowing as a deduction for the years 1942 and 1943 the full amount of the distributable income of the estate for each of said years, notwithstanding that the Executors did not obtain court orders authorizing the distribution of such income in its entirety. [114]

Now, we would like to——

The Court (Interposing): Just a moment.

Mr. Tonjes, do you wish to make a statement?

Mr. Tonjes: Very briefly, your Honor.

Opening Statement on Behalf of the Respondent
By Mr. Tonjes

Mr. Tonjes: The position of the Commissioner, of course, is that the amount which the estate may deduct is on the basis of the provision of the terms of the will, and if provisions of the applicable Revenue Act and Regulations limit it to the amount which was actually distributed, that the deductions are limited to that sum. The sums which were not distributed are part of the taxable income of the estate and were so treated by the Commissioner in his Notice of Deficiency.

There is a claim, your Honor, for a slight increased deficiency and I believe the facts which are stipulated support that, and that arises by reason of the fact that the parties agree that certain of the distributions making up the actual distribution were in part from corpus and not all income. Those items, or the amount of those sums, are set forth in the stipulation.

The Court: You may proceed.

Mr. Tonjes: There are some minor things, your Honor, I think, which may perhaps affect the pleadings at [115] this time, and desiring to raise a claim for an increased deficiency——

The Court (Interposing): Have you made it or are you about to make it?

Mr. Tonjes: I would like to request leave of the Court to file an amended answer which sets forth the Respondent's claim.

The Court: Is there objection?

Mr. Axelrod: No objection; it is covered by the stipulation.

The Court: The motion is granted.

Mr. Axelrod: We would also like to ask leave to file an amendment to our petition. I have handed to the Clerk such amendment; it merely sets forth two of the grounds on which we rely and which are set forth in the Stipulation of Facts. It is an addition of two——

The Court (Interposing): The petition will conform to the proof?

Mr. Axelrod: That is right, and neither one of the Executors are in San Francisco today, if it has to be verified. I think counsel will waive identification of the amendment.

Mr. Tonjes: If I have authority to do so, your Honor, I don't mind. Whether or not I can do that I am somewhat in doubt. [116].

Mr. Axelrod: If I may file it, I can bring one of the Executors over here Monday or Tuesday and have him verify it in court.

The Court: That may be well to do that.

Mr. Axelrod: May I file it at this time? It just covers two of the matters.

Mr. Tonjes: No objection to the filing of that, your Honor, and no doubt your Honor will want me to file a written brief to that, and I will in the next ten days or so.

Mr. Axelrod: It is covered by the Stipulation of Facts to the effect——

Mr. Tonjes (Interposing): That is true, but I think the record should be complete as to what my position is.

The Clerk: If your Honor please, I won't serve copies of this amendment on the parties until such time as it has been verified.

Mr. Axelrod: I have handed Mr. Tonjes a copy.

Mr. Tonjes: Then, in order to keep the record straight, might I have 30 days after filing or 10 days, some specified time after the service of that so that I can reply?

The Court: Do you need as much time as that?

Mr. Tonjes: I don't like to have the record show I am filing an answer before the amendment is served on me, you see. [117]

The Court: It will be served within the next 24 hours?

Mr. Axelrod: I think the only answer——

The Court (Interposing): He will make service as soon as it is verified?

Mr. Axelrod: Mr. Tonjes has the Stipulation of Facts which has been agreed upon, that that be filed at this time and considered in evidence.

Mr. Tonjes: Yes, the parties have stipulated to many of the facts in this case, Your Honor, and I file with the court an original and two copies and ask that the Clerk return one of them to me.

The Court: The stipulation will be received.

Mr. Axelrod: As I understand it, Mr. Tonjes is going to attach as exhibits C and D the copies of the income tax returns for the years involved and then he may substitute copies later.

Mr. Tonjes: Yes. I want to direct the Court's attention to the fact that the original income tax returns of the Estate of Isadore Zellerbach for the year 1942, being an original and an amended return, and the original return for the year 1943 are attached. The two returns for the year 1942 are marked Exhibit C and the return for the year 1943 being marked Exhibit D.

Might I have leave to withdraw those, your Honor, [118] and substitute photostatic copies?

The Court: You may do so.

Mr. Tonjes: That is all I have.

Mr. Axelrod: Judge Fitzpatrick?

Whereupon,

TIMOTHY I. FITZPATRICK

called as a witness for and on behalf of the Petitioner, having been first duly sworn, was examined and testified as follows:

The Clerk: Tell us your name, please.

The Witness: Timothy I. Fitzpatrick.

(Testimony of Timothy I. Fitzpatrick.)

Direct Examination

By Mr. Axelrod:

Q. It is Judge Fitzpatrick, is that right?

A. Yes.

Q. And you are one of the judges of the Superior Court of the State of California in and for the City and County of San Francisco?

A. I am.

Q. And you have been assigned to what is known as Department 9, which is the Probate Department of that court?

A. Yes.

Q. And as Judge of the Probate Department, you have in your jurisdiction the Estate of Isadore Zellerbach, Deceased? [119]

A. Yes.

Q. Are you familiar with that estate?

A. Well, more or less, yes. It has been in my department now, I guess, for about two years.

Q. I will call your attention to the fact that the record in this case shows that on November 25, 1942, there were two petitions filed in that estate, one of which asked for a partial distribution of income from that estate in the sum of \$181,000, which it was asked be distributed in the following amounts:

\$22,000 to Jennie B. Zellerbach, and \$53,000 to each of the children.

Then, on the same day, there was a petition filed for partial distribution of the corpus of the estate in an amount which has been stipulated here had a fair market value in excess of \$1,000,000; that on December 7, 1942 you signed an order authorizing

(Testimony of Timothy I. Fitzpatrick.)

the distribution of income in the amount of \$181,000, and the corpus as prayed for which had the value in excess of \$1,000,000.

I also call your attention to the fact that the petition recited, the petition for the distribution of income, recited that the income for this year, 1942, was approximately the amount of \$317,000. The orders show that the State Controller had consented to each of those distributions.

Now, I ask you, with those facts in mind, that if [120] the Executors or the heirs had presented a petition to you for the distribution of the entire income for the year 1942, would you have granted such a petition?

Mr. Tonjes: I object to the question, your Honor. Might I ask Mr. Counsel if this is being propounded, or this witness is being offered as an expert witness or something of that sort?

Mr. Axelrod: He is the Judge that has charge of this estate and who would sign these orders.

Mr. Tonjes: May I inquire, then, the purpose of the question?

Mr. Axelrod: The purpose is to show that we could have just as well as not have distributed the entire income for the year 1942 if we had so petitioned, and that therefore this is one of the cases that comes under the provisions of Section 162 of the Internal Revenue Code which we contend is what 162 was designed to accomplish.

Mr. Tonjes: I would like to state, then, your Honor, that the objection is renewed on the ground

(Testimony of Timothy I. Fitzpatrick.)

that it is immaterial, irrelevant; what might have been done, the fact remains that all of the petitions for distribution which are filed with the Court and acted upon by the Court, are made subject of stipulation and what might have been the result or what might not have been the result in the event that some further petitions were requested, or what not, might [121] have been made to the Court can't possibly have any bearing on what would constitute properly distributed income.

Certainly, it can't have any bearing on whether or not the income is distributable or not because that would depend entirely on the terms of the will, and for that reason Respondent objects to the witness testifying.

The Court: The objection will be overruled and I concede that the Petitioner has a right to present his theory of the case.

Mr. Tonjes: Very well, your Honor.

Q. (By Mr. Axelrod): Do you remember the question?

A. I am here as a witness, but in Probate Law, why, it wouldn't depend upon——

Mr. Tonjes (Interposing): Pardon me, your Honor. I think I will——

The Witness (Interposing): You made a statement it would depend on the terms of the will. It wouldn't at all unless there was something in the will that excludes you from doing it.

Mr. Tonjes: Just a moment. I have the right to object, and I think you should confine your an-

(Testimony of Timothy I. Fitzpatrick.)

swers to counsel's questioning, with all due respect to you.

The Witness: I know, but you made a statement——

Mr. Tonjes (Interposing): He can interrogate you [122] and perfect the record on that.

Mr. Axelrod: I have one further question I want to ask you, your Honor, which I didn't call to your Honor's attention in this matter.

Q. (By Mr. Axelrod): The record shows that all the specific legacies had previously been ordered distributed and that under the will, Jennie B. Zellerbach took one-half of the residue of the estate, each of the children had one-sixth of the residue. Now——

A. (Interposing): Had six months passed at that time with a notice to creditors a year after, which would be a very important element, and also others in the estate, whether the estate was solvent or insolvent depends upon partial distribution, or distribution.

Q. You are familiar with the estate, are you not?

A. Yes, I would say as familiar as I am with any large estate that is in my department.

Q. Well, the record also shows in this matter that the assets of the estate, the net assets over the liabilities, were in excess of \$1,000,000.

Now, with those facts in mind, would you have signed an order for the distribution of the entire income for the year 1942?

A. I surely would have. [123]

(Testimony of Timothy I. Fitzpatrick.)

Q. Now, I call your attention to the year 1943, and the record in this case, which shows that on November 30, 1943, the Executors filed a petition with the Court for a partial distribution of income in the sum of \$96,000, which they allege that the approximate income for the year 1943 was \$191,500, and that on December 13, 1943 you signed an order allowing a partial distribution of income in the amount of \$96,000, which amount was ordered be distributed one-third to each of the children.

Now, with the other facts as I have stated them, would you have, if the Petitioner had included a request to distribute the entire income of the estate for 1943, would you have granted such a petition?

A. I surely would.

Mr. Axelrod: No further questions.

Cross-Examination

By Mr. Tonjes:

Q. Would you base that entirely, Judge, on the representations contained in the petition?

A. I would base it on the condition that I knew the estate was in, which I would know from the record, and which I would know, as we say, after six months have passed, the time which creditors shall present their claims, and the assets of the estate; we always base distribution on that, to see there are sufficient assets left and it is not [124] impairing the corpus or the estate to any extent; the partial distribution could be made without impairing the interests of all those concerned, legatees,

(Testimony of Timothy I. Fitzpatrick.)

devisees, and others that would be interested in the estate. That is what you base your partial distribution on.

Q. Would you accept all the facts contained in the stipulation, or would you make an independent investigation to determine the value of some of these assets of the estate?

A. Well, of course, I would depend on what the appraisal was; I don't know whether the appraisal was made at that time or not, but I knew more or less about the Zellerbach Estate. It was in the mills, so I knew that. That is as far as any court can know. I didn't go in and make a great independent investigation at the time.

Q. Do you know whether or not the liability of the estate to pay Federal Income Taxes had been fully paid?

A. You say "had been fully paid"?

Q. Yes. A. No, I wouldn't know that.

Q. An estate of this size would be quite likely to run into a considerable liability for Federal Taxes, you would appreciate that, I guess.

A. I would appreciate it, surely. Of course, we always get a report from our Inheritance Tax Appraiser on these tax distributions, and I think in this case they had the consent, [125] did they not?

Mr. Axelrod: That is right; the record so shows.

The Witness: Yes, that is what I have to depend on.

Q. (By Mr. Tonjes): So if, as a matter of fact, an investigation conducted by you showed that there

(Testimony of Timothy I. Fitzpatrick.)

was a substantial liability for Federal Estate Taxes, it might alter your conclusion, would it not?

A. Well, if that showing had been made at the time, it might.

Q. Yes, and you would have to inquire into that, wouldn't you, Judge?

A. Well, if it was brought to my attention that there was to be a big Federal Inheritance Tax to be paid, and if I thought that the assets or the income of the estate would be impaired by granting a partial distribution, I would surely look into it, yes.

Q. So it would entail some exercise of judgment and discretion as to whether or not an order of that type would be granted, is that correct?

A. I think so.

Mr. Tonjes: I think that is all.

Redirect Examination

By Mr. Axelrod: [126]

Q. Before you grant these orders, you examine the Executors, don't you?

A. Yes, we have witnesses on the stand, of course, and they have to make a showing.

Q. And these matters are all investigated, I mean, before you sign such an order? You make such investigation at the time you signed the order granting the partial distribution?

Mr. Tonjes: I object to that; there is no question about the propriety of the distributions which were granted; counsel's question relates to whether or not he would grant some additional order of dis-

(Testimony of Timothy I. Fitzpatrick.)

tribution. I think his question should be confined to that proposition.

Mr. Axelrod: I just want to show that the Court just doesn't grant that matter; when he made the statement he would grant it, that he had investigated the situation of the estate.

Mr. Tonjes: I will stipulate that.

Q. (By Mr. Axelrod): I will also call your Honor's attention to the fact that the record in this case shows that the unrecorded liabilities, the total liabilities for the estate in 1942, which included the Federal and State tax, was \$1,490,565, and that the assets on the same date were \$3,425,092.

Now, with such a showing, would your testimony be [127] different? Would you still, under such a showing, would you have granted it?

A. Yes, I surely would.

Mr. Axelrod: That is all.

Mr. Tonjes: That is all.

The Court: Thank you, Judge.

(Witness excused.)

Mr. Axelrod: Mr. O'Connor.

Whereupon,

RICHARD C. O'CONNOR

called as a witness for and on behalf of the Petitioner, having been first duly sworn, was examined and testified as follows:

The Clerk: Tell us your name, Mr. Witness.

The Witness: Richard C. O'Connor.

(Testimony of Richard C. O'Connor.)

Direct Examination

By Mr. Axelrod:

Q. Mr. O'Connor, what is your capacity?

A. Deputy Inheritance Tax Attorney for the State of California.

Q. You are connected with the State Comptroller's office of the State of California, is that right?

A. That is right.

Q. And the State Comptroller's Office and your office has charge of the Inheritance Taxes for the State of [128] California, is that right?

A. That is true.

Q. Your particular office covers, as I understand, some 14 counties, including San Francisco and the——

A. ——adjacent counties.

Q. Yes, is that right, about 14 counties?

A. About 14, yes.

Q. And as such Deputy Inheritance Tax Attorney, you had under your jurisdiction in 1942 the Estate of Isadore Zellerbach, Deceased, is that right?

A. Yes.

Q. And you are more or less familiar with that estate, are you not?

A. Yes.

Q. I call your attention to the fact that the record in this case shows that on December 7, 1942, while the inheritance tax was not paid and determined as yet, a decree of partial distribution was made by the Probate Court consenting to the distribution of income from the estate in the sum of \$181,000, and that your office had consent to such

(Testimony of Richard C. O'Connor.)

partial distribution. The order, which is in evidence here, shows that it was signed by Mr. A. W. Brouillet; who is he?

A. He is the Deputy Inheritance Tax Attorney in San Francisco.

Q. He is the Deputy Inheritance Tax Attorney in charge [129] of your office, is that right?

A. Yes, he is the chief representative of the Comptroller in San Francisco.

Q. And the record in this case shows that he consented to the partial distribution on December 7th of \$181,000 in income; that is correct?

A. Yes.

Q. And this is a correct copy (showing same to witness)?

A. (Examining document): Yes.

Q. And I also call your attention to the fact that on December 8, 1942, the record in this case shows that an order and decree of partial distribution was made by the Probate Court consenting to the distribution of corpus of the estate which has been stipulated is in excess of \$1,000,000 in value, and that Mr. Brouillet on behalf of the State Comptroller consented to such distribution.

Now, with those facts in mind, if the request had been presented to your office for the distribution of the entire income of the estate, which was approximately \$320,000 for the year 1942, and with the fact that the inheritance taxes had not as yet been paid, would your office have consented to such distribution?

(Testimony of Richard C. O'Connor.)

Mr. Tonjes: That is objected to, your Honor, on the grounds it is irrelevant and immaterial. [130]

The Court: Objection overruled.

A. In what condition would that have left the estate, the net assets of the estate? Those distributions, approximately——

Q. (Interposing): The record shows that the net assets of the estate in '42 were in excess of \$1,000,000 over the liabilities.

A. Then without question such request would have been granted and the distribution prayed for would have been consented to.

Q. So in 1943 the inheritance taxes had already been paid so there would be no necessity for obtaining any consent; that is all.

Cross-Examination

By Mr. Tonjes:

Q. You base your conclusion, I gather, on the net worth of the estate?

A. That is right; our primary concern—our sole concern in granting or withholding consents to such partial distributions is based on the question whether the inheritance tax due sufficiently secured by assets remaining in the estate.

Q. And that requires the judgment and exercise of discretion, does it not?

A. I wouldn't say discretion; it is simply a matter of [131] mathematics.

Q. Matter of mathematics?

A. That is about all.

(Testimony of Richard C. O'Connor.)

Q. Could you figure out mathematically how low the estate would have to be before you would deny it under these circumstances?

A. Yes, we would have on file, certainly after a year or so from the date of the death, a report showing what the amount of inheritance tax due the State is. If we see that the amount remaining in the estate after this prayed for distribution is granted is far in excess of that amount, there is not much discretion involved; we just granted the request.

Q. Which is determined first: the Federal Estate tax or the State tax? A. Normally the State.

Q. The State? A. The California tax.

Q. Is there a tie-up or is the State tax determined in any way depending upon the Federal tax?

A. Yes, because one of the deductions allowable in the computation of the State inheritance tax is an amount represented by the Federal Estate tax.

Q. Do you know whether or not the Federal Estate tax had been determined when or at the date this question was [132] propounded to you?

A. I guess it was—when, 1942?

Mr. Axelrod: '42.

A. First in '42.

Q. (By Mr. Tonjes): Do you know whether or not the Federal Estate tax had been determined in 1942?

A. I believe a return had been filed, but that it had not been finally audited by the Federal authorities at that time.

(Testimony of Richard C. O'Connor.)

Mr. Tonjes: I think that is all.

Mr. Axelrod: That is all.

The Court: You are excused.

(Witness excused.)

Mr. Axelrod: Mr. Eisenbach.

Whereupon,

JULIAN EISENBACH

called as a witness for and on behalf of the Petitioner, having been first duly sworn, was examined and testified as follows:

The Clerk: State your name, Mr. Witness.

The Witness: Julian Eisenbach, E-i-s-e-n-b-a-c-h.

Direct Examination

By Mr. Axelrod:

Q. Mr. Eisenbach, you are an officer of the Wells [133] Fargo Bank and Union Trust Company, is that right? A. I am.

Q. What particular office do you hold?

A. Vice President.

Q. And as Vice-President, what are your particular functions?

A. Mainly in charge of credits.

Q. How long have you been connected with the Wells Fargo and Union Trust Company?

A. I am in my 49th year.

Q. And for a good portion of that time, have you been in charge of credits? A. Since 1916.

(Testimony of Julian Eisenbach.)

Q. 1916. Now, in 1942, as I understand it, the Wells Fargo Bank had made a loan to the Estate of Isadore Zellerbach, Deceased. A. Yes.

Q. Do you have the record in connection with that loan?

A. It is in that brief case there (indicating).

(Mr. Axelrod removed the record from the brief case and handed the same to the witness.)

Q. Would you please give us the details in connection with that loan?

A. (Examining document): On the 6th of November, 1942, the Executors of the Estate borrowed \$500,000; for collateral [134] they put up 9,000 shares of Crown Zellerbach Corporation preferred stock.

Mr. Axelrod: May I say it has been stipulated that that collateral had a value of approximately \$720,000?

Mr. Tonjes: That is contained in the stipulation.

Mr. Axelrod: He stipulated here that this collateral had a value of \$720,000 at that time.

Q. (By Mr. Axelrod): Now, when was the next entry, or what is the next entry you have in connection with that loan?

A. On the 15th of January, 1943 they paid \$100,000, reducing the principal to \$400,000.

On the 5th of August, 1943 they reduced it another—they borrowed \$50,000, increasing it to \$450,000.

On the 6th of December, 1943 they borrowed \$75,000 increasing the loan to a total of \$525,000,

(Testimony of Julian Eisenbach.)

and on the 13th of March, 1944 they paid it off entirely.

Q. Now, with that record in mind, if the Executors had requested the bank in 1942 to consent to a distribution of the estate, even though the loan was not paid, would the bank have consented to such a distribution?

A. Oh, as a matter of course.

Mr. Axelrod: That is all.

Cross-Examination

By Mr. Tonjes: [135]

Q. What was the——

Mr. Axelrod (Interposing): One more question. Would your answer be the same for 1943?

The Witness: All through the whole period of the loan.

Mr. Axelrod: That is all.

Q. (By Mr. Tonjes): That was because the collateral was pretty good? A. Yes.

Q. Suppose the collateral began to slip a little in value. What would you do?

A. We had so much of it I think the course would have been the same. The loan was very well secured from the very beginning.

Q. Would you say that loan—Strike that.

What was the form of the note?

A. I haven't that here; I think it was a one-year note.

Q. It was a general obligation, wasn't it, so that if the collateral wasn't satisfactory, you could have recourse to the other assets of the estate?

(Testimony of Julian Eisenbach.)

A. We could ask for some more collateral, yes.

Q. It would depend, then, upon the stability and value of the Crown Zellerbach stock, as to whether or not that note would continue to be well secured, would it not?

A. Mainly, yes. [136]

Q. And if that Crown Zellerbach stock went down so low that it was not deemed to be good collateral, you would not renew the note, would you?

A. We might.

Q. Suppose the note went—the value of the Crown Zellerbach stock went so low that you sold it, you would then have to make recourse to the other assets of the estate, would you not?

Mr. Axelrod: I object to the question on the grounds it is assuming something not in evidence; there is no evidence here that the Crown Zellerbach Corporation stock had declined and it is assuming something not in evidence. The stipulation of facts shows that in December '42 the collateral was worth \$720,000, so it is assuming something not in evidence.

Mr. Tonjes: That is a strange objection coming from counsel for the Petitioner on the grounds that it is not supported by evidence in the record. This whole proposition of all of the oral evidence we have had introduced today is all on the assumption of something that might happen, and I think it is perfectly proper.

The Court: He may answer.

Q. (By Mr. Tonjes): What might happen, what courses might you take so as to find out—

(Testimony of Julian Eisenbach.)

Mr. Axelrod (Interposing): Speaking of approximately '42, and that is something that happened already in the past.

The Witness: You will have to ask the question again, please.

Q. (By Mr. Tonjes): If the stock of the Crown Zellerbach Company declined to such an extent that it no longer was good security for the face of the obligation, you would demand more security, would you not? A. Yes.

Q. And in the event that the note was not paid and the security had to be sold, you would then look to the other assets, would you not?

A. We might.

Q. Well, you would do all you could to get all of your obligation?

A. Yes, certainly, we would.

Q. And do you know what business the Crown Zellerbach Company was in?

A. Yes, certainly.

Q. What were they in?

A. The Crown Zellerbach Corporation is a holding company and an operating company, a very large enterprise.

Q. Do you know what the value of the stock was in 1942? [138]

A. Of this Crown Zellerbach preferred that we held?

Q. Yes.

A. According to our records, it was worth about a million dollars.

(Testimony of Julian Eisenbach.)

Q. I mean per share. A. \$97.50.

Q. You also appreciate that United States Steel sold as high as \$240 at one time? A. Yes.

Q. And you have seen it sell as low as \$75?

A. I don't remember, but it has taken a good drop.

Q. It could happen to Zellerbach?

A. It could happen to other good stock.

Mr. Tonjes: No further questions.

Redirect Examination

By Mr. Axelrod:

Q. In 1942, though, in December of 1942, you would have consented to the distribution of the estate as the accounts then stood, is that correct?

A. Yes.

Mr. Axelrod: That is all.

Mr. Tonjes: No further questions.

The Court: You are excused.

(Witness excused.)

If your Honor please, if it is agreeable with the Petitioner's case.

Mr. Tonjes: The Respondent has no further evidence, your Honor.

If your Honor please, if it agreeable with the Court, counsel and I have discussed the matter and it would be satisfactory or desirable on the part of both of us if you would grant the Petitioner the right to file an opening brief and I reply and he have a right to file a closing brief.

(Testimony of Julian Eisenbach.)

The Court: 45 days will be allowed for opening brief by the Petitioner and 45 days thereafter by Respondent for the reply, and 30 days thereafter for the Petitioner to reply to the Respondent's brief.

Mr. Axelrod: Thank you, your Honor.

Mr. Tonjes: That will be satisfactory, your Honor.

The Clerk: If you will bear with me, your Honor, I will borrow a 1947 calendar.

(The Clerk borrowed a 1947 calendar from T. M. Mather.)

The Clerk: January 21st for the original brief of the Petitioner.

Mr. Axelrod: That would be in Washington?

The Clerk: Yes; and if your Honor please, March 8th is on Saturday. Should I make it March 10th, 45 days thereafter? [140]

The Court: Give them March 10th.

The Clerk: The Respondent's brief on March 10th, and the reply brief by the Petitioner on April 10th, 1947.

The Court: That concludes the assignments for today?

The Clerk: That is correct, your Honor.

The Court: We will recess until tomorrow morning—until Monday morning.

(Whereupon, at 2:50 o'clock p.m., Friday, December 6, 1946, the hearing in the above-entitled matter was closed.)

Filed Jan. 6, 1947. [141]

[Title of Tax Court and Cause.]

ANSWER TO AMENDMENT TO PETITION

Comes now the Commissioner of Internal Revenue, respondent above named, by his attorney J. P. Wenchel, Chief Counsel, Bureau of Internal Revenue, and for answer to the amendment to petition filed by the above-named petitioner admits and denies as follows:

5(e-1). Denies the allegations contained in subparagraph (e-1) of paragraph 5 of the amendment to petition.

5(e-2). Denies the allegations contained in subparagraph (e-2) of paragraph 5 of the amendment to petition.

/s/ J. P. WENCHEL,

Chief Counsel, Bureau of
Internal Revenue.

Of Counsel:

B. H. NEBLETT,

Division Counsel

T. M. MATHER,

E. A. TONJES,

Special Attorneys,

Bureau of Internal Revenue.

TMM:b 12/10/46

Received and Filed Dec. 30, 1946. [142]

Tax Court of the United States

9 T. C. No. 12

Docket No. 9786

ESTATE OF ISADORE ZELLERBACH, De-
ceased, J. DAVID ZELLERBACH and HAR-
OLD L. ZELLERBACH, Executors,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated July 22, 1947

FINDINGS OF FACT AND OPINION

Under the will of decedent, who died in August, 1941, after certain specific bequests, the residue was bequeathed and devised three-sixths to his widow and one-sixth to each of his three children. The will contained no direction as to the payment of the income of the estate during its administration. Under California law the entire estate was subject to the possession of the executors and to the control of the Probate Court for purposes of administration, sale and disposition as provided by law and chargeable with the expenses of administration and payment of debts. Upon petition of the executors and order of the Probate Court, the executors made partial distributions to the residuary beneficiaries out of 1942 and 1943 income and also corpus. There is no evidence as to what disposition was made of the undistributed 1942 and 1943 income or whether it was properly credited to the beneficiaries out of 1942 and 1943 income and also administration in 1942 and 1943. At the end of 1943

the estate assets had a value of \$3,942,739.89 and its liabilities amounted to \$1,104,886.70. Held, only the amounts actually distributed out of 1942 and 1943 income to the beneficiaries were allowable as a deduction in the respective years under section 162 (b), (c) or (d), Internal Revenue Code. [143]

Albert A. Axelrod, Esq., and Philip S. Ehrlich, Esq., for the petitioners.

Edward J. Tonjes, Esq., for the respondent.

The Commissioner determined deficiencies in income tax of \$1,171.72 and \$65,772.90 for 1942 and 1943. The question to be determined is whether the petitioners, for the purpose of determining taxable net income of the estate, are entitled to deduct, in addition to the income distributed to beneficiaries, all of the remaining income of each year although not distributed to beneficiaries or credited to them. In his amended answer the Commissioner makes claim for increased deficiencies in the amounts of \$1,768.55 for 1942 and \$67,425.17 for 1943.

Most of the facts were stipulated.

Findings of Fact

J. David Zellerbach and Harold L. Zellerbach are the duly appointed and acting executors of the last will and testament of Isadore Zellerbach, who died on August 7, 1941, a resident of the City and County of San Francisco, California. Income tax returns (Form 1041) for the years 1942 and 1943 were filed on the cash basis with the collector of internal revenue at San Francisco.

On September 2, 1941, the will of petitioners' decedent was admitted to probate by the Superior Court of California in and for the City and County

of San Francisco. Under the will, after bequests of \$5,000 to each of his eight grandchildren, all the rest, residue and remainder of testator's estate is given, devised and bequeathed as follows: An undivided three-sixths thereof to the widow, Jennie B. Zellerbach, and an [144] undivided one-sixth to each of the three children, J. David, Harold L. and Claire. The executors were given full, absolute and complete power and authority to sell, mortgage, pledge, exchange or otherwise dispose of or deal with the whole or any portion of the estate according to their judgment and discretion and without any court order. The will made no provision for the distribution of the income received by the estate during the period of administration.

Upon petition of the executors of the estate praying for leave to distribute the specific legacies an order of the Probate Court, dated September 2, 1942, was entered authorizing distribution of 61 shares of the preferred stock of Crown Zellerbach Corporation of a stated value of \$4,994.38 and the sum of \$5.62 in cash to each of the eight grandchildren of decedent.

On November 25, 1942, the executors filed with the Probate Court a petition for the distribution of \$181,000 from the income of the estate received during the year 1942, amounting to approximately \$317,000, as follows:

To Jennie B. Zellerbach, widow.....	\$ 22,000
To J. David Zellerbach, son.....	53,000
To Harold L. Zellerbach, son.....	53,000
To Claire Z. Saroni, daughter.....	53,000
Total	\$181,000

The petition stated in part that the total value of the estate as shown by the inventory and appraisal was \$4,754,671.56, and that "it is not proposed at this time to distribute any of the corpus of the residue of the estate, nor any income, save and except that hereinabove described." [145]

After hearing had, the Probate Court entered an order dated December 7, 1942, in which it found as follows:

* * * that the time for filing claims against said estate has expired; that all claims which have been filed have been allowed, approved and paid; that the federal estate tax, as shown by the return, has been paid; that the State Controller of the State of California has consented in writing to the said distribution; that all personal property taxes due and payable by said estate have been paid; that the distribution prayed for in said petition may be allowed as therein prayed for without injury to said estate or any person interested therein, and that after said distribution sufficient assets will remain in the hands of the executors to pay all debts and expenses of administration;
* * *

The order authorized payment "from the income of said estate, for the calendar year 1942, the total sum of \$181,000," payable \$22,000 to the widow and \$53,000 to each of the three children of decedent.

The above distribution of \$181,000 was paid \$180,297.85 out of income and \$702.15 out of corpus.

On November 25, 1942, the executors filed another petition with the Probate Court praying for authority to distribute from the corpus of the estate:

6,000 shares of preferred stock of Crown Zellerbach Corporation;

30,000 shares of common stock of Crown Zellerbach Corporation;

9,000 shares of preferred stock of Rayonier Incorporated;

12,000 shares of common stock of Rayonier Incorporated;

one-half thereof to the widow and one-sixth to each of the three children of decedent. After hearing had, the Probate Court entered an order dated December 8, 1942, authorizing the executors to make distribution of the above stock as prayed for. The fair market value of the above stock at the time of its distribution was \$1,146,000. [146]

On December 31, 1942, all the distributions authorized by the Probate Court during the year 1942 had been made.

An original income tax return for the year 1942 was filed for the estate showing income of \$322,756.33, from which is deducted \$181,000 as the amount distributable to beneficiaries, leaving a net income (taxable to fiduciary) of \$141,756.33, and disclosing a tax liability of \$97,606.47. On December 14, 1943, an amended income tax return was filed for the year 1942 showing income of \$322,756.33, from which is deducted \$315,323.74 as the amount distributable to beneficiaries, leaving a net income (taxable to fiduciary) of \$7,432.59 and disclosing a tax liability of \$1,619.78.

The total net income of the estate for 1942, before any allowance for income distributed to beneficiaries during the year was \$324,209.38, which sum is composed of ordinary income in the amount of \$316,595.74 and capital gains in the amount of \$7,613.64.

The \$181,000 distributed in 1942 by the executors of the estate was reported by the beneficiaries under the will in their original Federal income tax returns for 1942 as distributable income from the estate as follows: The widow reported \$22,000 and each of the three children reported \$53,000.

On January 24, 1944, the widow filed an amended income tax return with the collector at San Francisco, in which she reported as having been distributed to her the amount of \$157,661.87, representing one-half of all of the income of the estate for the year 1942.

Pursuant to a petition of the executors filed June 18, 1943, the Probate Court, on July 7, 1943, made an order authorizing the executors [147] to make a partial distribution of the assets of the estate consisting of a parcel of unimproved real property in the City and County of San Francisco as follows: Three-sixths thereof to the widow and one-sixth thereof to each of the three children. The fair market value of the property at the time of distribution was \$27,500.

Pursuant to a petition of the executors filed August 4, 1943, the Probate Court on August 18, 1943, made an order authorizing the executors to make a partial distribution of the assets of the

estate consisting of 627 shares of the common stock and 460 shares of the preferred stock of Dreamland Auditorium, Ltd., as follows: Three-sixths thereof to the widow and one-sixth thereof to each of the three children. The fair market value of the shares at the time of distribution was \$3,450.

On November 30, 1943, the executors filed a petition with the Probate Court for authorization to make a partial distribution consisting of \$96,000, of which \$32,000 was to be distributed to each of the three children of decedent. In the petition it was stated that the income for 1943 would approximate \$191,500; that the executors desired to distribute \$96,000 thereof; and that it was not proposed to distribute any of the corpus of the residue of the estate, nor any income save and except that theretoabove described. No portion of the income was requested to be distributed to the widow. On December 13, 1943, the Probate Court made an order authorizing the income distribution of \$96,000, as prayed for. The distribution of \$96,000 was paid \$94,164.15 out of income and \$1,835.85 out of corpus. [148]

On December 31, 1943, all distributions authorized by the Probate Court during 1943 had been made.

The income tax return filed for the estate for 1943 shows income tax income of \$203,895.74 and victory tax income of \$200,811.46, from each of which \$185,328.30 was deducted as the amount distributable to beneficiaries, leaving an income tax net income of \$18,567.44 and a victory tax net in-

come of \$15,483.16. The total income and victory tax liability shown by the return is \$6,712.28. The return contains a schedule as follows:

SCHEDULE A		
	Federal	State
Jennie B. Zellerbach, 343 Sansome St., S. F.....	\$ 92,664.15	\$100,405.73
J. D. Zellerbach, 343 Sansome St., S. F.	30,888.05	33,468.58
Harold Zellerbach, 343 Sansome St., S. F.	30,888.05	33,468.58
Claire Z. Saroni, 343 Sansome St., S. F.	30,888.05	33,468.58
	<hr/>	<hr/>
	\$185,328.30	\$200,811.46

Note: On December 13, 1943, a distribution of income, \$96,000.00 was authorized by court order to J. D. and Harold Zellerbach and Claire Saroni. The net income of the estate is deemed to be distributable under Section 162-2 of Regulation III.

The widow included in her Federal income tax return for 1943, as income received by her from the estate, the sum of \$92,664.15.

The total net income of the estate for 1943, before any allowance for income distributed to beneficiaries during that year, was \$206,864.94, which sum was composed of ordinary income of \$188,328.30 and capital gain of \$18,536.64.

On petition filed October 26, 1942, the Probate Court, on November 6, 1942, made an order authorizing the executors to borrow a sum not to exceed \$1,000,000, to execute their promissory note or notes payable on or before [149] one year after date with

interest at $2\frac{1}{2}$ per cent per annum, and as security therefor to pledge all or any portion of the personal property of the estate remaining in the hands of the executors.

Pursuant to such authorization the executors, on November 6, 1942, borrowed from Wells Fargo Bank & Trust Co. the sum of \$500,000, pledging as collateral 9,000 shares of the preferred stock of Crown Zellerbach Corporation of the market value at that time of approximately \$720,000. They also borrowed the sum of \$318,669.31 from the widow, Jennie B. Zellerbach. On January 15, 1943, a payment of \$100,000 was made, reducing the principal of the bank loan to \$400,000. On August 5, 1943, and on December 6, 1943, additional amounts of \$50,000 and \$75,000 were borrowed, increasing the principal of the loan to \$525,000. The entire loan was paid on March 13, 1944.

The Federal estate tax, as disclosed by the return filed, had been paid at December 31, 1943. The Commissioner subsequently determined that the estate was liable for a deficiency in Federal estate taxes, which controversy was finally settled in November, 1946.

On December 31, 1942, the estate had assets of the then value of \$3,425,092.17 and liabilities of \$1,490,565.49, or an excess of assets over liabilities of \$1,934,526.68. This was after the distribution of the amount of \$181,000 and the distribution of corpus of \$1,146,000, and after giving effect to all liabilities which were subsequently determined to be due.

On December 31, 1943, the assets of the estate had a value of \$3,942,739.89, and the liabilities amounted to \$1,104,886.70, or an excess of assets over liabilities of \$2,837,853.19. [150]

Opinion

Van Fossan, Judge: The respondent contends that the executors under the will of Isadore Zellerbach were not required to distribute to the beneficiaries any of the income of the estate during 1942 and 1943 and that, therefore, only so much of the income as was actually distributed constituted a deduction under the provisions of section 162, Internal Revenue Code.

The petitioners contend that the estate is entitled, under section 162 (b) and (c)¹, to a deduction of

¹Sec. 162. Net Income

The net income of the estate or trust shall be computed in the same manner and on the same basis as in the case of an individual, except that * * *

(b) There shall be allowed as an additional deduction in computing the net income of the estate or trust the amount of the income of the estate or trust for its taxable year which is to be distributed currently by the fiduciary to the beneficiaries, and the amount of the income collected by a guardian of an infant which is to be held or distributed as the court may direct, but the amount so allowed as a deduction shall be included in computing the net income of the beneficiaries whether distributed to them or not. Any amount allowed as a deduction under this paragraph shall not be allowed as a deduction under subsection (c) of this

the full amount of its 1942 and 1943 income. They argue that the will provides for the distribution of three-sixths of the residue to the widow and one-sixth to each of the three children of decedent; that under the provisions of section 300 of the California Probate Code² the beneficiaries had a present right, both in 1942 and 1943 to the entire

section in the same or any succeeding taxable year;

(c) In the case of income received by estates of deceased persons during the period of administration or settlement of the estate, and in the case of income which, in the discretion of the fiduciary, may be either distributed to the beneficiary or accumulated, there shall be allowed as an additional deduction in computing the net income of the estate or trust the amount of the income of the estate or trust for its taxable year, which is properly paid or credited during such year to any legatee, heir, or beneficiary, but the amount so allowed as a deduction shall be included in computing the net income of the legatee, heir, or beneficiary. [151]

2§300. Title to Decedent's Estate: Possession. When a person dies, the title to his property, real and personal, passes to the person to whom it is devised or bequeathed by his last will, or, in the absence of such disposition, the persons who succeed to his estate as provided in Division II of this code; but all of his property shall be subject to the possession of the executor or his administrator and to the control of the superior court for the purposes of administration, sale or other disposition under the provisions of Division III of this code, and shall be chargeable with the expenses of administering his estate, and the payment of his debts and the allowance to the family, except as otherwise provided in this Code [Enacted 1931.]

income of the estate; and that, upon petition, it would have been mandatory upon the Probate Court to have made an order for the payment of all of the 1942 and 1943 income to the beneficiaries. Sections 956, 1000 and 1001 of the California Probate Code.³

³§956. Closing Administration. If all of the debts have been paid by the first order for payment, the court must direct the payment of legacies and the distribution of the estate among the persons entitled, as provided in the next chapter; but if there are debts remaining unpaid, or if, for other reasons, the estate is not in a condition to be closed, the administration may continue for such time as may be reasonable. [Enacted 1931.]

§1000. Petition and Notice of Hearing. At any time after the lapse of four months from the issuance of letters testamentary or of administration, the executor or administrator, or any heir, devisee or legatee, * * * may petition the court to distribute a legacy, devise or share of the estate, or any portion thereof, to any person entitled thereto, upon such person giving a bond as hereinafter provided. The clerk shall set the petition for hearing by the court and give notice thereof for the period and in the manner required by section 1200 of this code. When the petitioner is not the executor or administrator, notice must be given to the executor or administrator by citation. An executor or administrator, not petitioning, or any person interested in the estate may resist the application.

§1001. Order for Distribution: Prerequisites to Order: Bond. If, at the hearing, it appears that the estate is but little indebted and that all inheritance taxes payable in said proceedings have been paid, or that the State controller, an inheritance tax attorney, or an assistant inheritance tax attorney has in writing consented to said distribution

Although section 300 of the California Probate Code provides that title to the property of a deceased person passes to his heirs, devisees or legatees, it also provides that the title so passes “subject to the possession of the executor or his administrator and to the control of the superior court for the purpose of administration, sale or other disposition” and “shall be chargeable with the expenses of administering his estate, and the payment of his debts and the allowance to the family.” See *Dabney v. Dabney*, 129 Pac. (2d) 470. In the *Estate of B. Brasley Cohen*, 8 T. C. — (April 8, 1947) involving a California estate, the question considered was whether the legatees had a present right under California law to obtain or compel a distribution of all of the income during the taxable year. This Court concluded that the legatees did not have “a recognized present right under local

and the legacy, devise or share of the estate, or any portion thereof, may [152] be distributed to the person entitled thereto without loss to the creditors or injury to the estate or any person interested therein, the court shall make an order requiring the executor or administrator to deliver the legacy, devise or share of the estate or such portion thereof as the court may designate, to the person entitled thereto, upon receiving from such person a bond executed by him, and payable to the executor or administrator in such sum as the court may designate, with sureties to be approved by the judge, and conditioned for the payment, whenever required, of the proportion of the debts due from the estate, not exceeding the value or amount of the legacy or portion of the estate, so ordered to be delivered. * * * [153]

law to obtain income or compel a distribution of income", (Regulations 111, section 29.162-2(b)), stating:

The legatees did have the privilege of petitioning the court, which they did not exercise, and if they had established certain facts the local court could have, in its discretion, ordered a distribution of the designated portion of the estate. We think the privilege of soliciting the local court's discretion is not the equivalent of a present right to compel distribution.

The will involved herein contains no direction for the payment of the [153] income received during the administration of the estate to the residuary beneficiaries. Petitions were filed with the court for a distribution of the 1942 income to the extent of \$181,000 and of the 1943 income to the extent of \$96,000. No other petition for the distribution of income was addressed to the court either by petitioners or any of the beneficiaries under the will and no further distribution of 1942 and 1943 income was authorized. The possession and handling of the property of an estate by the executor are subject to the control of the court and the executor derives his power to act from the order of the court. In *Re Palm's Estate*, 156 Pac. (2d) 62, 66; Section 300, California Probate Code. The testimony of the judge of the Superior Court of San Francisco County, in which court the will involved herein was admitted to probate, to the effect that, had petition been made therefor, he would have issued an order in 1942 and 1943 for

the distribution of all the income received by the estate during such years, is not determinative. Neither is it material that the bank to which the estate was indebted on a \$500,000 loan, or the inheritance tax attorney, would have consented to such distribution had petition been made therefor. The facts as they actually existed during the taxable year are determinative. *American Potash & Chemical Co.*, 7 T. C. 1113, 1116.

The facts herein are materially different from those in *William C. Chick*, 7 T. C. 1414. In that case the will of decedent was allowed for probate in March, 1929. William C. Chick, the son of decedent, who was named both as executor and trustee under the will, immediately qualified as executor and shortly thereafter qualified as trustee. All acts necessary [154] to complete and wind up the administration of the estate of decedent had been fully performed prior to the taxable year 1940, except that the assets comprising the residuary estate had not been transferred by the executor to himself in trust for the benefit of himself and his sister, as provided under the will. Under the terms of the testamentary trust the net income of the residuary trust was currently distributable in equal shares to the two beneficiaries. This Court approved the determination of the Commissioner that the estate in 1940 was no longer in process of administration and that the income of the estate was taxable to the two beneficiaries of the residuary trust under section 162 (b).

Herein decedent died in August, 1941. The assets of the estate had an appraised value in excess of \$4,700,000. At the end of 1943 there were liabilities outstanding in excess of \$1,100,000. Although the Federal estate tax as disclosed by the return had been paid, the Commission subsequently determined that the estate was liable for a deficiency, which controversy was not settled until November, 1946. There is no showing that the process of administration had been continued unreasonably or that the ordinary duties pertaining to the administration and settlement of the estate had been completed prior to the taxable years. Section 29.162-1(c) of Regulations 111.

It is true that in the case of *In Re Stephenson's Estate*, 150 Pac. (2d) 222, upon which petitioners primarily rely, it is stated that "It is made mandatory by section 1001 that the court make the order of distribution." The court, however, immediately modifies that statement for it continues as follows: [155]

* * * for it is there provided that if it appears that the estate is but little indebted and that inheritance taxes have been paid and that the distribution of the portion of the estate may be made without loss to creditors or injury to others 'the court shall make an order' for the delivery of the share of the estate or such portion thereof as the court may designate to the person entitled thereto. * * *

the Probate Code clearly gives power to the court to order a partial distribution of an

estate and, given the prescribed conditions, it is made mandatory upon the court to make the order. But to exercise that power accurately it is necessary that it first be determined what persons are entitled to the order and what portion or portions of the estate should be distributed to them. * * *

The court thus recognizes that the mandate is subject to certain conditions so that in the last analysis the order of distribution is subject to the judgment and discretion of the Probate Court.

The beneficiaries had no present right to the 1942 and 1943 income. They merely had a potential right thereto, which, as to the amount in dispute, was neither recognized nor enforced. The 1942 and 1943 income of the estate was not income of the estate "to be distributed currently" as provided in section 162 (b). *Estate of Andrew J. Igoe*, 6 T. C. 639.

Neither is the estate entitled to any deduction for 1942 and 1943 under section 162 (c) in addition to the amounts actually distributed out of income. There is no evidence that the undistributed 1942 and 1943 income was properly credited to any of the beneficiaries as required by the statute. *Commissioner v. Stearns*, 65 Fed. (2d) 371, certiorari denied, 290 U. S. 670.

The facts and circumstances in *Estate of Andrew J. Igoe*, *supra*, are wholly different from the facts and circumstances herein. In that case specific credits of the distributive share of income were made to the [156] account of each beneficiary. They

were notified of their respective distributive shares; they received numerous large payments in cash, which were charged to their accounts with the estate, and the actions of the executors in so treating the income earned by the estate were approved in all respects by the court having jurisdiction over the settlement of their accounts. Herein the residuary beneficiaries may never have received the 1942 and 1943 income retained by the executors. There is no evidence showing what disposition was made of such income by petitioners.

The petitioners further contend that, having distributed property of the value of \$1,146,000 in addition to the distribution of \$181,000 in 1942, the estate is entitled to a deduction of the entire income in 1942, and, having distributed property of the value of \$30,950 in addition to the distribution of \$96,000 in 1943, the estate is entitled to a deduction in 1943 to the extent of \$126,950 under section 162 (d) (1), Internal Revenue Code.⁴

⁴Sec. 162. Net Income.

The net income of the estate or trust shall be computed in the same manner and on the same basis as in the case of an individual, except that
* * *

(d) Rules for Application of Subsection (b) and (c).—For the purposes of subsections (b) and (c)—

(1) Amounts Distributable Out of Income or Corpus.—In cases where the amount paid, credited, or to be distributed can be paid, credited, or distributed out of other than income, the amount paid, credited, or to be distributed (except under a gift, bequest, devise, or inheritance not to be paid, credited, or distrib-

The respondent argues that there is no occasion for the application of section 162 (d) since the amounts of income and corpus distributed by the estate are clearly identifiable and that the orders of the Probate Court are binding in this respect.

Subsection (d) (1) is made specifically not applicable to any amount paid, credited, or to be distributed "under a gift, bequest, devise, or inheritance not to be paid, credited, or distributed at intervals." The bequest and devise under which the distributions of income and corpus herein were made was a bequest and devise of the residue of the estate of decedent after payment of all debts,

uted at intervals) during the taxable year of the estate or trust shall be considered as income of the estate or trust which is paid, credited, or to be distributed if the aggregate of such amounts so paid, credited, or to be distributed does not exceed the distributable income of the estate or trust for its taxable year. If the aggregate of such amounts so paid, credited, or to be distributed during the taxable year of the estate or trust in such cases exceeds the [157] distributable income of the estate or trust for its taxable year, the amount so paid, credited, or to be distributed to any legatee, heir, or beneficiary shall be considered income of the estate or trust for its taxable year which is paid, credited, or to be distributed in an amount which bears the same ratio to the amount of such distributable income as the amount so paid, credited, or to be distributed to the legatee, heir, or beneficiary bears to the aggregate of such amounts so paid, credited, or to be distributed to legatees, heirs, and beneficiaries for the taxable years of the estate or trust. * * * [157]

specific legacies and administration expenses. That the residue was paid in installments, consisting of income or corpus, is immaterial and does not convert the bequest and devise into one distributable at intervals within the meaning of section 162 (d) (1).

Subsection (d) was added to section 162 by section 111 (c) of the Revenue Act of 1942 as a complement to the amendment of section 22 (b) (3) and for purposes of clarity. Ways and Means Committee Report No. 2333, 77th Congress, Second Session, Section 110, pp. 66-68; Report of the [158] Committee on Finance, No. 1631, 77th Congress, 2nd Session, Section 111, pp. 69-75. Section 110 of the Ways and Means Committee Report is captioned "Annuity Trusts". The section states that the construction of the existing law, as contained in *Irwin v. Gavit*, 26 U. S. 161, was written into the amendment of section 22 (b) (3) and that both the amendment to section 22 (b) (3) and section 162 changed the treatment of gifts, bequests, devises and inheritances of amounts to be paid in any event out of income or corpus, such as involved in *Burnet v. Whitehouse*, 283 U. S. 148; and *Helvering v. Pardee*, 290 U. S. 365. The Committee's report states that such changes involved

* * * treating such amounts, if under the terms of the gift, bequest, or inheritance the payment, crediting, or distribution thereof is to be made at intervals, as gifts, bequests, devises, or inheritances if income from property to the extent that such amount is paid, credited,

or to be distributed out of income from property. * * * (p. 67)

As a complement to the amendment of section 22(b) (3) and for purposes of clarity, section 162 of the Code is also amended by adding a new subsection designated as “(d)”. This subsection provides a formula for allocating income of an estate or trust to legatees and beneficiaries in order to make the source of distribution clear and to prevent tax avoidance by distributions claimed to be other than out of income or out of income other than income for the current taxable year. It is immaterial under the rule stated in section 162 (d) whether income is used to make the distribution, whether such distribution may, in the discretion of the fiduciary, be made out of other than income, or whether the terms of the will or trust instrument direct that amounts other than income be used to assure the beneficiary the payment of a specified sum at stated intervals. * * * (p. 68)

In Section 111 of the Report of the Committee on Finance, page 69, it is stated: [159]

This section is basically the same as section 110 of the bill passed by the House, relating to annuity trusts. Although numerous changes have been made by your committee, such changes are designed to give further and more detailed application of the principles of section 110 of the House bill rather than to change its fundamental theory.

See also section 29.162-2 of Regulations 111, dealing with section 162 (d) (1), which is entitled "allocation of Estate and Trust Income to Legatees and Beneficiaries. — (a) Allocation among annuitants." From the foregoing, it is obvious that amounts paid out of corpus on a bequest and devise as herein involved are not within the purpose and scope of subsection (d).

Since the bequest and devise of the residuary estate herein is a bequest and devise "not to be paid, credited, or distributed at intervals," subsection (d) of section 162 is not applicable.

Petitioners are entitled only to the deduction in 1942 and 1943 of the amount actually distributed out of income under section 162 (c). In view of our holding, the respondent is entitled to increased deficiencies. Under the stipulated facts, petitioners distributed out of income \$180,297.85 in 1942 and \$94,164.15 in 1943, instead of \$181,000 and \$96,000, respectively, allowed by respondent in his original computation.

Decision will be entered under Rule 50.

[Seal] [160]

[Title of Tax Court and Cause.]

NOTICE UNDER RULE 50

To: Phillip S. Ehrlich, Esq., 2002 Russ Bldg., San Francisco 4, Calif.

Take notice that the Respondent in the above-entitled proceeding filed with the Court on Aug. 22, 1947, a computation and notice, a copy of which is inclosed. This proceeding will be called for hearing upon such computation at 9:30 a.m. on Sept. 17, 1947, before a Division of the Court at its Washington Office, Constitution Avenue at 12th Street, Northwest, unless, prior to that date, your written acquiescence to the entry of a decision based on such computation shall have been filed with the Court.

No further notice of said hearing will be sent.

/s/ ROBERT C. TRACY,
Acting Clerk.

[Title of Tax Court and Cause.]

COMPUTATION FOR ENTRY OF
DECISION

Comes now the Commissioner of Internal Revenue, respondent above named, by his attorney, Charles Oliphant, Chief Counsel, Bureau of Internal Revenue, and submits the attached computation of the deficiency under the opinion of The Tax Court of the United States promulgated July 22, 1947, in the above-entitled appeal.

The respondent's computation is submitted in accordance with Rule 50 of the Tax Court's Rules of Practice and is without prejudice to his right to contest the correctness of the decision pursuant to the statute in such cases made and provided.

/s/ CHARLES OLIPHANT,

W. J. McF.

Chief Counsel, Bureau of
Internal Revenue.

Of Counsel:

B. H. NEBLETT,
Division Counsel.

T. M. MATHER,
E. A. TONJES,
Special Attorneys,
Bureau of Internal Revenue.

WJMcF:b 8/14/47

AUDIT STATEMENT

C:TS:PD

SF:EAT:ENN:Recomp.

In re: Estate of Isadore Zellerbach, Deceased,
 J. David Zellerbach and Harold L. Zellerbach,
 Executors, 343 Sansome Street, San Francisco,
 California.

Docket No. 9786

Tax Liability for the Taxable years ended De-
 cember 31, 1942, and December 31, 1943.

INCOME TAX

Year	Liability	Assessed	Deficiency
1942	\$ 99,375.02	\$ 97,606.47	\$ 1,768.55
1943	74,100.74	6,712.28	67,388.46
Total	\$173,475.76	\$104,318.75	\$ 69,157.01

Recomputation of tax liability prepared in accor-
 dance with the Opinion of The Tax Court of the
 United States promulgated July 22, 1947.

YEAR: 1942

Schedule 1

ADJUSTMENT TO NET INCOME

Net Income as Disclosed in the Deficiency Notice dated September 20, 1945	\$143,209.38
As Adjusted, Based on the Opinion of the Tax Court of the United States Promulgated July 22, 1947, and Stipulation of Facts Between the Parties	143,911.51
Adjusted (Increase)	\$ 702.15

Schedule 2

EXPLANATION OF ADJUSTMENT

Net income is increased \$702.15, as a result of the opinion of The Tax Court of the United States holding that petitioner is entitled to a deduction of \$180,297.85, the amount actually distributed out of income to beneficiaries of the estate, in lieu of a deduction of \$181,000.00 as allowed in the deficiency notice.

Schedule 3

COMPUTATION OF TAX

Net Income, Schedule I.....	\$143,911.53
Less: Personal Exemption.....	500.00
Surtax Net Income.....	\$141,411.53
Normal Tax Net Income.....	\$143,411.53
Normal Tax at 6% on \$143,411.53.....	\$ 8,604.69
Surtax on \$143,411.53.....	93,435.11
Total Tax	\$102,039.80
Alternative Tax, Schedule 4.....	\$ 99,375.02
Income Tax Liability.....	\$ 99,375.02
Tax Assessed, Account No. 1209423, 1st California District	97,606.47
Deficiency in Income Tax.....	\$ 1,768.55

Schedule 4

COMPUTATION OF ALTERNATIVE TAX

Net Income, Schedule 1.....	\$143,911.53
Less: Net Long-Term Capital Gain.....	7,613.64
Ordinary Net Income.....	\$136,297.89
Less: Personal Exemption.....	500.00
Surtax Net Income.....	\$135,797.89
Normal Tax Net Income.....	\$135,797.89
Normal Tax at 6% on \$135,797.89.....	\$ 8,147.87
Surtax on \$135,797.89.....	87,420.33
Partial Tax	\$ 95,568.20
Add: 50% of Net Long-Term Capital Gain.....	3,896.82
Alternative Tax	\$ 99,375.02

YEAR 1943

Schedule 5

ADJUSTMENT TO NET INCOME

	Income Tax Net Income	Victory Tax Net Income
Net Income as Disclosed in the Deficiency Notice Dated September 20, 1945	\$110,864.94	\$107,811.46
As Adjusted, Based on the Opinion of the Tax Court of the United States Promulgated July 22, 1947, and Stipulation of Facts Between the Parties	112,700.79	109,647.31
Adjustment (Increase)	\$ 1,835.85	\$ 1,835.85

Schedule 6

EXPLANATION OF ADJUSTMENT

Net income is increased \$1,835.85, as a result of the opinion of The Tax Court of the United States holding that petitioner is entitled to a deduction of \$94,164.15, the amount actually distributed out of income to beneficiaries of the estate, in lieu of a deduction of \$96,000.00 as allowed in the deficiency notice.

Schedule 7

COMPUTATION OF TAX

Net Income, Schedule 5.....	\$112,700.79
Less: Personal Exemption.....	500.00
<hr/>	
Surtax Net Income.....	\$112,200.79
Normal Tax Net Income.....	\$112,200.79
Normal Tax at 6% on \$112,200.79.....	\$ 6,732.05
Surtax on \$112,200.79.....	68,778.62
<hr/>	
Total Tax	\$ 75,510.67
Alternative Tax, Schedule 8.....	69,149.57
<hr/>	
Income Tax.....	\$ 69,149.57
Victory Tax Net Income, Schedule 5....	\$109,647.31
Less: Specific Exemption.....	624.00
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Income Subject to Victory Tax.....	\$109,023.31
Victory Tax Before Credit (5% of \$109,023.31)	\$ 5,451.17
Less: Victory Tax Credit.....	500.00
<hr/>	
Net Victory Tax.....	4,951.17
<hr/>	
Income and Victory Tax Liability.....	\$ 74,100.74
Income and Victory Tax Liability Disclosed by Re- turn, Account No. 186677, 1st California District..	6,712.28
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Deficiency in Income and Victory Tax.....	\$ 67,388.46

Schedule 8

COMPUTATION OF ALTERNATIVE TAX

Net Income, Schedule 5.....	\$112,700.79
Less: Net Long-Term Capital Gain.....	18,536.64
<hr/>	
Ordinary Net Income.....	\$ 94,164.15
Less: Personal Exemption.....	500.00
<hr/>	
Surtax Net Income.....	\$ 93,664.15
Normal Tax Net Income.....	\$ 93,664.15
Normal Tax at 6% on \$93,664.15.....	\$ 5,619.85
Surtax on \$93,664.15.....	54,261.40
<hr/>	
Partial Tax	\$ 59,881.25
Add: 50% of Net Long-Term Capital Gain.....	9,268.32
<hr/>	
Alternative Tax	\$ 69,149.57

Received and filed Aug. 22, 1947.

[Title of Tax Court and Cause.]

CONSENT TO SETTLEMENT

The computation of the respondent filed with the Court on August 22, 1947 has been examined and found to be in accordance with the determination of the Court as set forth in its report. Petitioner therefore joins with the respondent in praying that the Court enter its decision based upon such computation, reserving however the right to contest the correctness of such decision in the appellate courts as provided by statute.

/s/ PHILIP S. EHRLICH,
Attorney for Petitioner.

Filed Sept. 10, 1947. [167]

The Tax Court of the United States
Washington

Docket No. 9786

ESTATE OF ISADORE ZELLERBACH, De-
ceased, J. DAVID ZELLERBACH and
HAROLD L. ZELLERBACH, Executors,
Petitioners,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

DECISION

Pursuant to the report of this Court promulgated July 22, 1947, the respondent filed a proposed computation of tax on August 22, 1947, and on September 10, 1947 the petitioner filed an acquiescence in the respondent's computation. It is therefore

Ordered and Decided: That there are deficiencies in income tax for the years 1942 and 1943 in the respective amounts of \$1,768.55 and \$67,388.46.

[Seal] /s/ ERNEST H. VAN FOSSAN,
Judge.

Entered Sept. 16, 1947. [168]

[Title of Tax Court and Cause.]

PETITION OF ESTATE OF ISADORE ZELLERBACH, DECEASED, J. DAVID ZELLERBACH AND HAROLD L. ZELLERBACH, EXECUTORS, FOR REVIEW BY THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT, OF A DECISION BY THE TAX COURT OF THE UNITED STATES.

Taxpayer, the petitioner in this cause, by Philip S. Ehrlich and Albert A. Axelrod, counsel for petitioner, hereby files its petition for a review by the United States Circuit Court of Appeals for the Ninth Circuit, of the decision by the Tax Court of the United States, promulgated on July 22, 1947, 9 T. C. No. 12, determining deficiencies in the petitioner's Federal income taxes for the calendar years 1942 and 1943 in the respective amounts of \$1,768.55 and \$67,388.46, which deficiencies were determined by The Tax Court on September 16, 1947, and respectfully shows:

I.

J. David Zellerbach and Harold L. Zellerbach are the duly [169] appointed, qualified and acting Executors of the last Will and Testament of Isadore Zellerbach, deceased, who died on August 7, 1941, a resident of the City and County of San Francisco, State of California. The Estate of Isadore Zellerbach, deceased, the petitioner herein, filed income tax returns for the years 1942 and 1943 on the cash basis with the Collector of Internal Revenue at San Francisco, California.

II.

Nature of Controversy

The controversy involves the petitioner's liability for Federal income taxes for the calendar years 1942 and 1943.

Isadore Zellerbach died testate on August 7, 1941, in the County of San Mateo, State of California, being at the time of his death a resident of the City and County of San Francisco, State of California; on the 2nd day of September, 1941, his will was admitted to probate by the Superior Court of the State of California, in and for the City and County of San Francisco, in those certain probate proceedings entitled "In the Matter of the Estate of Isadore Zellerbach, Deceased, No. 87721", and J. David Zellerbach, Harold L. Zellerbach and Marcus M. Baruh, who were named therein as such, were appointed Executors, and Letters Testamentary were issued to them. Marcus M. Baruh died on the 6th day of April, 1942, and ever since said date J. David Zellerbach and Harold L. Zellerbach have been and now are the duly appointed, qualified and acting Executors of the last Will and Testament of [170] Isadore Zellerbach, deceased.

Under the decedent's last Will and Testament, there are certain specific legacies provided for after which the residue of the estate is directed to be distributed one-half to decedent's widow, Jennie B. Zellerbach, and one-sixth to each of the decedent's three children, to-wit, J. David Zellerbach, Harold L. Zellerbach and Claire Z. Saroni.

On August 19, 1942, the Executors of decedent's Will filed with the Probate Court a petition praying for leave to distribute the specific legacies, which petition was granted on September 2, 1942.

On November 25, 1942, the Executors filed with the Probate Court two petitions for partial distribution. In one the Executors alleged that the income of the estate (taxpayer herein) for the calendar year 1942 would approximate the sum of \$317,000.00, and prayed for an order for the Probate Court authorizing them to distribute from the income of the estate the sum of \$181,000.00 as follows:

- (a) to Jennie B. Zellerbach, the widow of the decedent, \$22,000.00;
- (b) to J. David Zellerbach, the son of decedent, \$53,000.00;
- (c) to Harold L. Zellerbach, the son of decedent, \$53,000.00;
- (d) to Claire Z. Saroni, the daughter of the decedent, \$53,000.00.

This petition [171] was heard on December 7, 1942 by the Probate Court, and was granted.

The other petition for partial distribution, which was filed on November 25, 1942, after alleging that all the gifts and legacies under the decedent's Will were distributed on September 2, 1942 and paid, prayed for permission to distribute certain assets of the estate to the residuary legatees and devisees in the proportions that they took under the Will, namely, one-half to the widow, and one-sixth to each of the children. This petition was heard by the Probate Court and granted on December 8, 1942, and the property described in the petition was ordered distributed in the proportions hereinabove set forth.

The property so distributed on December 8, 1942 had a fair market value on that date of \$1,146,000.00.

The income of the estate for the calendar year 1942, before any allowances for income distributed to the beneficiaries under the decedent's Will (the residuary legatees and devisees) was \$324,209.38, which said sum was composed of ordinary income in the amount of \$316,595.74, and capital gains in the amount of \$7,613.64.

On December 31, 1942, the estate (taxpayer herein) had assets of \$3,425,092.17 and liabilities of \$1,419,565.49, or an excess of assets over liabilities of \$1,934,526.68. This was after the distribution of \$181,000.00 in income and \$1,146,00.00 in [172] corpus, and after giving effect to all liabilities which were subsequently determined to be due.

The estate (taxpayer herein) filed income tax returns on a cash basis for the calendar year 1942 with the Collector of Internal Revenue, San Francisco, California, and claimed as a credit the amount distributed to the beneficiaries by the decree of partial distribution made by the Probate Court on December 7, 1942 and subsequently filed an amended return and claimed credit for the full amount of the income of the estate for the calendar year 1942, to-wit, the sum of \$324,209.58. The beneficiaries under the Will reported in their respective income tax returns the full amount of the estate's (taxpayer herein) income for the year 1942; the widow, Jennie B. Zellerbach, having originally reported only the amount of cash actually distributed to her, and subsequently having filed an amended return

wherein she included as income distributed to her from the estate of the decedent, one-half of the income of the estate for the year 1942, to-wit, the sum of \$157,661.87.

On November 30, 1943, the Executors filed a petition with the Probate Court for partial distribution, asking permission to distribute from the income of the estate for the year 1943 the sum of \$96,000.00, which sum was to be distributed one-third to each of the children of the decedent, and no portion of the income was asked to be distributed to the widow, Jennie B. Zellerbach. [173] The petition alleged that the income for the year 1943 would approximate the sum of \$191,500.00.

On December 13, 1943, the Probate Court made an order for partial distribution, authorizing the distribution of the amount of \$96,000.00 as prayed for.

Jennie B. Zellerbach, the widow, reported in her income tax return for the year 1943 the fact that there had been distributed from the estate of decedent (taxpayer herein) for the year 1943, the sum of \$92,664.15.

The total net income of the estate (taxpayer herein) for the year 1943, before any allowance for income distributed to beneficiaries during said year was the sum of \$206,364.94, which sum was composed of ordinary income in the amount of \$188,328.30, and capital gains in the amount of \$18,536.44.

The estate (taxpayer herein) filed its income tax return for the year 1943 on a cash basis with the

Collector of Internal Revenue, San Francisco, California, and claimed as credit for income distributed to the beneficiaries, (the legatees under the Will) the sum of \$185,528.30.

On December 31, 1943, the assets of the estate had a value of \$3,942,739.89, and the liabilities amounted to the sum of \$1,104,886.70, and the amount of the excess of assets over the liabilities was the sum of \$2,837,855.19.

The estate, other than the amounts which it owed for taxes, [174] had only two creditors on December 31, 1942, one of whom was the widow, Jennie B. Zellerbach, and the other the Wells Fargo Bank & Union Trust Co.; that the Wells Fargo Bank & Union Trust Co. would have consented to a distribution of the estate had such a request been made of it.

The State of California would have consented to the distribution of all the income in 1942, notwithstanding that the inheritance taxes had not been paid.

For the calendar year 1942 the taxpayer claimed that it was entitled to a deduction in income in the amount of \$316,957.84, which represented income received by the taxpayer during said calendar year and which the taxpayer claimed was distributable to the heirs of the decedent, (the beneficiaries of the estate) and was includable by them in their respective income tax returns. The Commissioner of Internal Revenue allowed as a deduction from such income the amount of \$181,000.00, which was the

amount actually distributed in cash by the taxpayer to the beneficiary, and refused to allow a further claimed deduction in the amount of \$135,957.84.

For the calendar year 1943 the taxpayer claimed that it was entitled to a deduction in income in the amount of \$188,297.50, which represented income received by the taxpayer during said calendar year and which the taxpayer claimed was distributable to the heirs of the decedent, (the beneficiaries of the estate) and was includable by them in their respective income tax returns. [175] The Commissioner of Internal Revenue allowed as a deduction from such income the amount of \$96,000.00, which was the amount actually distributed in cash by the taxpayer to the beneficiary, and refused to allow a further claimed deduction in the amount of \$92,297.50.

The controversy centers primarily around the interpretation of Section 162 of the Internal Revenue Code and the Regulations of the Commissioner of Internal Revenue applicable thereto.

III.

The said Estate of Isadore Zellerbach, deceased, being aggrieved by the conclusions of law contained in the opinion of the court, and by its decision entered pursuant thereto, desires to obtain a review thereof by the United States Circuit Court of Appeals for the Ninth Circuit.

IV.

Assignments of Errors

The petitioners assigns as errors the following acts and omissions of The Tax Court of the United States:

1. The failure to allow as a deduction from the petitioner's gross income for the year 1942 the full amount of petitioner's income for the year 1942.

2. The failure to allow as a deduction from the petitioner's gross income for the year 1943 the full amount of petitioner's income for the year 1943.

3. The failure, [176] in the alternative, to allow as a deduction from the petitioner's gross income for the year 1942 the value of the property distributed to the legatees and devisees under decedent's Will during the year 1942 under the decree of partial distribution made and entered by the Probate Court during the year 1942.

4. The failure, in the alternative, to allow as a deduction from the petitioner's gross income for the year 1943 the value of the property distributed to the legatees and devisees under decedent's Will during the year 1943 under the decree of partial distribution made and entered by the Probate Court during the year 1943.

5. The failure to find that the beneficiaries under decedent's Will had a present right to the 1942 income of the estate of the decedent.

6. The failure to find that the beneficiaries under decedent's Will had a present right to the 1943 income of the estate of the decedent.

7. The findings of a deficiency for the year 1942 in the amount of \$1,768.55, in lieu of a determination that the petitioner (taxpayer) is entitled to a refund for said year in the amount of \$95,986.69, less the amount of \$24,401.61, being the amount remaining unpaid on the assessment against the petitioner (taxpayer) for said year, or a determination [177] that the petitioner (taxpayer) is entitled to a net refund of \$71,585.08.

8. The finding of a deficiency for the year 1943, in lieu of a determination that there is no income tax due from the petitioner (taxpayer) for said year.

Wherefore, petitioner prays for a review by the United States Circuit Court of Appeals, for the Ninth Circuit, of the decision by the United States Tax Court, promulgated on July 22, 1947, 9 Tax Court , No. 12, and that upon such review, said Honorable Court make and enter a decree setting aside and reversing said decision of the United States Tax Court and determine that the petitioner (taxpayer) is entitled to a refund of income taxes for the year 1942 in the net amount of \$95,986.69 less the amount of \$24,401.61 remaining unpaid on its assessment for said year, or a net refund of \$71,585.08, and a further determination that for the year 1943 there is no income tax due from petitioner.

/s/ PHILIP S. EHRLICH,

/s/ ALBERT A. AXELROD,

Counsel for Petitioner. [178]

State of California,
City and County of San Francisco—ss.

Philip S. Ehrlich and Albert A. Axelrod, each
being first duly sworn, depose and say:

That they are the attorneys and counsel for the
Executors of the Estate of Isadore Zellerbach, de-
ceased, and for J. David Zellerbach and Harold L.
Zellerbach, the petitioner in the above entitled
cause; that as such attorneys and counsel they are
authorized to verify the foregoing Petition for Re-
view; that they have read the said Petition for Re-
view and are familiar with the statements contained
therein; and that the statements made are true to
the best of their knowledge, information and belief.

/s/ PHILIP S. EHRLICH,

/s/ ALBERT A. AXELROD,

Subscribed and sworn to before me this 11th day
of October, 1947.

[Seal] DOROTHY H. McLENNAN,
Notary Public in and for the City and County of
San Francisco, State of California.

Filed Oct. 14, 1947. [179]

In The United States Circuit Court of Appeals
For The Ninth Circuit

Docket No. 9786

ESTATE OF ISADORE ZELLERBACH, De-
ceased, J. DAVID ZELLERBACH and
HAROLD L. ZELLERBACH, Executors,
Petitioner on Review,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent on Review.

NOTICE OF FILING PETITION FOR
REVIEW

To: Charles Oliphant, Chief Counsel, Bureau of
Internal Revenue:

You are hereby notified that the above petitioner did, on the 14th day of October, 1947, file with the Clerk of The Tax Court of the United States, at Washington, D. C., a petition for review by the United States Circuit Court of Appeals for the Ninth Circuit, of the decision of this Court heretofore rendered in the above-entitled case. Copy of the petition for review as filed is heretofore attached and served upon you.

Dated this 17th day of October, 1947.

/s/ VICTOR S. MERSCH,

Clerk, The Tax Court of the
United States.

Service of copy of Petition for Review acknowledged this October 17, 1947.

/s/ CHARLES OLIPHANT, CAR,
Chief Counsel, Bureau of
Internal Revenue,
Attorney for Respondent.

Filed T.C.U.S. Oct. 17, 1947. [180]

The Tax Court of the United States

Docket No. 9786

ESTATE OF ISADORE ZELLERBACH, De-
ceased, J. DAVID ZELLERBACH and HAR-
OLD L. ZELLERBACH, Executors,
Petitioners,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

NOTICE OF FILING PETITION FOR
REVIEW

To: Charles Oliphant, Esq., Chief Counsel, Bureau
of Internal Revenue:

Please Take Notice that the petitioner, on the 14th day of October, 1947, filed with the Clerk of the Tax Court of the United States at Washington, D. C., a Petition for Review by the United States Circuit Court of Appeals, for the Ninth Circuit, of a decision of the United States Tax Court hereto-

fore rendered in the above-entitled cause, a copy of which Petition for Review and the assignment of errors as filed is hereby attached and served upon you.

Dated: San Francisco, California, October 20, 1947.

/s/ PHILIP S. EHRLICH,

/s/ ALBERT A. AXELROD,

Counsel for Petitioner.

[Affidavit of service by mail attached.]

Received and filed Oct. 31, 1947. [181]

[Title of Tax Court and Cause.]

PRAECIPE FOR RECORD

To the Clerk of the Tax Court of the United States:

You are hereby requested to prepare and certify and transmit to the Clerk of the United States Circuit Court of Appeals, for the Ninth Circuit, with reference to a petition for review heretofore filed by the petitioner in the above entitled cause, with a transcript of the record of the above entitled cause prepared and transmitted as required by law and by the rules of said Court and to include in said transcript of record the following documents or certified copies thereof, to-wit:

1. The docket entries of all proceedings before the Tax Court.

2. Pleadings before the Tax Court of the United States as follows:

- (a) Petition for redetermination.

(b) Answer of the respondent. [183]

(c) Respondent's motion for leave to file the amended answer, which was filed on December 6, 1946.

(d) Respondent's amended answer, filed on December 6, 1946.

(e) Petitioner's amendment to petition for redetermination, filed December 6, 1946.

3. Stipulation of facts filed December 6, 1946.

4. Reporter's transcript of the proceedings and testimony before the Tax Court on December 6, 1946.

4½. Respondent's answer to amendment to petition, filed December 30, 1946.

5. Findings of fact and opinion of the Tax Court of the United States.

6. Notice under Rule 50.

7. Respondent's computation for entry of decision.

8. Stipulation signed by the attorney for petitioner with respect to the computation of respondent.

9. Decision of the Tax Court.

10. Petition for review filed by Petitioner in the above cause.

11. This praecipe.

12. Notice of filing petition for review.

Dated: October 27th, 1947.

/s/ PHILIP S. EHRLICH,

/s/ ALBERT A. AXELROD,

Attorneys for Petitioner.

[Affidavit of service by mail attached.]

Filed Oct. 31, 1947. [184]

[Title of Tax Court and Cause.]

CERTIFICATE

I, Victor S. Mersch, clerk of The Tax Court of the United States, do hereby certify that the foregoing pages, 1 to 185, inclusive, contain and are a true copy of the transcript of record, papers, and proceedings on file and of record in my office as called for by the Praecipe in the appeal (or appeals) as above numbered and entitled.

In testimony whereof, I hereunto set my hand and affix the seal of The Tax Court of the United States, at Washington, in the District of Columbia, this 13th day of November, 1947.

[Seal] /s/ VICTOR S. MERSCH,

Clerk, The Tax Court of the
United States.

[Endorsed]: No. 11795. United States Circuit Court of Appeals for the Ninth Circuit. Estate of Isadore Zellerbach, Deceased, J. David Zellerbach and Harold L. Zellerbach, Executors, Petitioners, vs. Commissioner of Internal Revenue, Respondent. Transcript of the Record. Upon Petition to Review a Decision of the Tax Court of the United States.

Filed November 21, 1947.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

In the United States Circuit Court of Appeals,
for the Ninth Circuit.

No. 11795

ESTATE OF ISADORE ZELLERBACH, De-
ceased, J. DAVID ZELLERBACH and
HAROLD L. ZELLERBACH, Executors,
Appellant,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

STATEMENT OF POINTS ON WHICH AP-
PELLANT INTENDS TO REPLY ON THE
APPEAL, AND PARTS OF RECORD
WHICH APPELLANT THINKS NECES-
SARY FOR CONSIDERATION THEREOF.

Pursuant to the provisions of subdivision 6 of Rule 19 of the Rules of Practice of the United States Circuit Court of Appeals, for the Ninth Circuit, the appellant hereby designates the following points on which it intends to rely on the appeal in connection with the above appeal:

1. The Tax Court erred in failing to allow as a deduction from the appellant's gross income for the year 1942 the full amount of the appellant's income for the said year 1942.

2. The Tax Court erred in failing to allow as a deduction from the appellant's gross income for the year 1943 the full amount of the appellant's income for the said year 1943.

3. The Tax Court erred in failing, in the alternative, to allow as a deduction from the appellant's

gross income for the year 1942 the value of the property distributed to the legatees and devisees under the decedent's Will during the year 1942 under the Decree of Partial Distribution made and entered by the Probate Court during the year 1942.

4. The Tax Court erred in failing, in the alternative, to allow as a deduction from the appellant's gross income for the year 1943 the value of the property distributed to the legatees and devisees under the decedent's Will during the year 1943 under the Decree of Partial Distribution made and entered by the Probate Court during the year 1943.

5. The Tax Court erred in failing to find that the beneficiaries under the decedent's Will had a present right to the 1942 income of the estate of the decedent.

6. The Tax Court erred in failing to find that the beneficiaries under the decedent's Will had a present right to the 1943 income of the estate of the decedent.

7. The Tax Court erred in finding a deficiency in income taxes for the year 1942 in the amount of \$1,768.55, in lieu of a determination that the appellant was entitled to a refund for said year in the amount of \$95,986.69, less the amount of \$24,401.61, being the amount remaining unpaid on the assessment against the appellant for said year, or a determination that the appellant was entitled to a net refund of \$71,585.08.

8. The Tax Court erred in finding a deficiency in income taxes for the year 1943, in lieu of a determination that there was no income tax due from the appellant for said year.

9. An estate of a decedent is allowed an additional deduction in computing the net income of the estate, the income which is distributed to the heirs or legatees or the income which in the discretion of the Executors may be either distributed or accumulated.

10. Residuary legatees and devisees under the California Probate law are entitled to petition for a distribution of income. The estate of a decedent vests, subject to administration, in his heirs or devisees or legatees immediately upon his death.

11. Where a distribution of the corpus of an estate is made in any year that the estate has distributable income, the distribution is taxable to the legatee to the extent of the distributable income.

12. The estate having distributed to the residuary legatees corpus of a value in excess of distributable income, it is deemed that all income was distributed to the legatees.

13. The ordinary duties pertaining to the administration of the decedent's estate had been completed, and accordingly it is deemed that the estate has been distributed and the income taxable to the legatees.

That the appellant designates the entire record on appeal as necessary for the consideration of the foregoing points which appellant intends to rely on upon the appeal.

Dated: San Francisco, California, December 3, 1947.

/s/ PHILIP S. EHRLICH,

/s/ ALBERT A. AXELROD,

Attorneys for Appellant.

[Affidavit of service by mail attached.]

[Endorsed]: Filed Dec. 3, 1947.

